Calendar No. 509

89TH CONGRESS, 1st Session | SENATE | REPORT No. 527

CONFLICT OF INTEREST

JULY 28 (legislative day, JULY 27), 1965.—Ordered to be printed

Mr. PASTORE, from the Committee on Commerce, submitted the following

REPORT

[To accompany S. 1948]

The Committee on Commerce, to which was referred the bill (S. 1948) to amend the Communications Act of 1943, as amended, with respect to Commissioners, employees, and executive reservists of the Federal Communications Commission, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

GENERAL STATEMENT

This bill was introduced by Senator Warren G. Magnuson, chairman of the committee, at the request of the Federal Communications Commission. A hearing thereon was held on June 23, 1965, at which the Federal Communications Commission Chairman, E. William Henry, testified in support of the proposal. No witness appeared in opposition to the bill.

PURPOSE OF LEGISLATION

The purposes of this legislation are to amend section 4(b) of the Communications Act (47 U.S.C. 154(b)) dealing with financial interests of FCC Commissioners and employees to bring this provision of that act more closely into line with current national policy on conflicts of interest as reflected by the general conflict-of-interest law enacted by the Congress in 1962 (Public Law 87–849), and President Johnson's Executive Order No. 11222 of May 8, 1965, and to exempt from the provisions of section 4(b) "special Government employees", i.e., the short-term consultant, and persons serving in the Commission's executive reserve program. (See memorandum regarding conflict-of-interest provisions of Public Law 87–849 of Robert F. Kennedy, Attorney General, dated January 28, 1963; memorandum

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of May 2, 1963, entitled, "Preventing Conflicts of Interest on the Part of Special Government Employees"; and Executive Order No. 11222 of May 8, 1965, reprinted in full in appendix.)

As reported, the bill, S. 1948, would:

1. Prohibit members of the Federal Communications Commission or persons in its employ from having a financial interest in, being employed by, or having any official relation to—(i) any person engaged in radio broadcasting; (ii) any person engaged in communication by wire or radio as a common carrier; (iii) any person a substantial part of whose activities consists of the manufacture or sale of radio apparatus for wire or radio communication; (iv) any person a substantial part of whose activities consists of the installation, servicing, operation, or maintenance of apparatus used for the transmission of communications by wire or radio; (v) any person a substantial part of whose activities consists of the providing of services to any other person a substantial part of whose activities consists of radio broadcasting or communications by wire or radio as a common carrier; or (vi) a holding company, mutual fund, or other investment company whose investments are concentrated in the areas covered above.

2. Exempt from its provisions "special Government employees" as that term is defined in Public Law 87–849, 76 Stat. 1119; "executive reservists" acting as such pursuant to section (e) of Section 710 of the Defense Production Act of 1950, as amended (96 Stat. 583, 50 U.S.C. App. 2160(e)), and not otherwise employed by the Government in a full-time capacity; and those executive reservists employed full-time in time of war or during periods of national emergency declared by the President.

3. Provide that the proscriptions of subsection 4(b)(2) shall not apply where, after full disclosure, a written determination is made by the appointing official that the interest [of the Commissioner or Commission employee] is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from him.

4. Repeal the second sentence of subsection 4(j) of the Communications Act as redundant.

Thus, S. 1948, while continuing to prevent the same general types of activities now prohibited by subsection 4(b), would narrow the restrictions contained therein to make them clearer and more realistic without sacrificing the necessary and meaningful restrictions on substantial outside interests which might affect a Commissioner's or an employee's performance of his duties.

BACKGROUND AND NECESSITY FOR LEGISLATION

While FCC Commissioners and employees should continue to be prohibited from investing in broadcasting companies and communications common carriers, the committee believes that the broad language of present subsection 4(b) should be changed to remove the shadow land involving those thousands of companies which use radio merely

as an incident of their business, and situations such as purchases of an ordinary mutual fund.

Subsection 4(b) of the Communications Act presently contains a wide prohibition against any financial interest by any Commissioner or Commission employee in any company connected with radio. It covers not only communication common carriers, and broadcast and other radio licensees, but also any company manufacturing radio apparatus, and every company furnishing services or radio apparatus to companies which are licensees or manufacturers. It prohibits the ownership of "stocks, bonds, or other securities of any corporation subject to any of the provisions of the act."

When the Communications Act was enacted in 1934, the relevant background was the use of radio by broadcast companies and the regulation of communications common carriers. Since that time, however, the Commission has licensed over a million companies and individuals in the safety and special radio services.

Thus, today many corporations having nothing to do with broadcasting or communications common carriers subject to the Commission's regulatory authority are Commission licensees, and FCC Commissioners and Commission employees are prohibited from buying their stock, solely because their corporate airplane is equipped with radio, or because in some other incidental way they use radio communications in their business. States and municipalities are also usually licensees of police and fire radio systems. In fact, practically every facet of modern industry and commerce, whether it be farming, mining, manufacturing, transportation, or public utilities uses radio communication and is therefore subject to the licensing provisions of the Communications Act.

Furthermore, the growth of mutual funds containing a wide diversity of stocks, some of which are almost certain to be in the communicat ons field, raises further problems as to the applicability of subsection 4(b). Almost any mutual fund would likely contain some shares in A.T. & T., GE, RCA, or some such company which Commissioners and employees should not be permitted to invest in directly. However, where the employee's financial interest in such company—through investment in shares of a mutual fund—is so remote or inconsequential that he would not be barred under the general conflict-of-interest law from participation in matters involving such companies, then the Communications Act should be clarified to permit him to hold such investments. The nonparticipation test of the general conflict-of-interest law (Public Law 87–849), would apply in such circumstances.

S. 1948 exempts from the financial-interest provisions of subsection 4(b) "special Government employees" as that term is defined in Public Law 87–849, 76 Stat. 1119, approved October 23, 1962, 18 U.S.C. 201. The broad scope of existing subsection 4(b) stands as an obstacle to the use of part-time consultants contemplated by Public Law 87–849, which has liberalized the conflict-of-interest standards as they apply to special Government employees. That act is designed to "* * * help the Government obtain the temporary or intermittent services of persons with special knowledge and skills whose principal employment is outside the Government" (Attorney General's "Memorandum Regarding Conflict-of-Interest Provisions of Public Law 87–849," dated January 28, 1963 (28 F.R. 985)).

Such an employee would continue to remain fully subject to all the conflict-of-interest standards now contained in Public Law 87–849. And, in the event a "special Government employee" should become a regular employee of the Commission, or a member thereof, he would then become subject to subsection 4(b)(2) of the Communications Act. In short, it is not intended to confer on "special Government employees" any rights beyond those now set out in Public Law 87–849.

Also exempt from the financial interest provisions of subsection 4(b) would be persons acting as executive reservists pursuant to subsection (e) of section 710 of the Defense Production Act of 1950, as amended (69 Stat. 583, 50 U.S.C. app. 2160(e)), and not otherwise employed by the Government in a full-time capacity, and those executive reservists employed full time in time of war or during periods of national emergency declared by the President.

The executive reserve program, approved in Congress in 1955, authorized the President to provide for the establishment and training of a nucleus executive reserve for employment in executive positions in Government during periods of emergency. It further authorized the President to provide by regulation for the exemption of members of such reserve from the operation of the conflict-of-interest provisions in sections 281, 283, 284, 434, and 1914 of title 18 of the United States Code and section 190 of the Revised Statutes (sec. 99 of title 5). This he did in his Executive order establishing the National Defense Executive Reserve. (Executive Order 10660, Feb. 15, 1956, 21 F.R. 1117.)

The financial interest provisions of section 4(b) of the Communications Act have been found to be unduly restrictive in the recruitment for the executive reserve training program of the Commission. This has been one of the difficulties encountered in the search for well-qualified appointees. And it is those people who, by reason of their past employment in the Commission or employment in executive positions in the communications industry, are the best qualified and most valuable to serve the Government as full-time Commission employees in periods of national emergency or time of war.

AMENDMENT

The committee adopted the amendment recommended by Chairman E. William Henry of the Federal Communications Commission in the course of his testimony at the hearing before the committee on June 23, 1965, and has amended the bill by adding after line 15, on page 3 the following new paragraph (4) to subsection (b) of section 1, as follows:

> (4) Paragraph (2) of subsection (b) of this section shall not apply if the Commissioner or employee advises the Government official responsible for appointment to his position of all pertinent circumstances and receives a written determination made by such official that the financial interest, employment, or official relation to a person described in paragraph (2) is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such Commissioner or employee.

Under the legislation, as introduced, injustice or hardship could still occur in exceptional circumstances. For example, if an employee of the FCC were to be named beneficiary of a trust containing, among other things, a few shares of stock of an interstate communications common carrier, he would be in violation of the Communications Act if he continued in the Commission's employ. Yet he might have no control over the trust and not be able to get the trustees to sell the shares in question. Other factual situations, each one unique, could arise.

The amendment adopted by your committee provides some flexibility so that, in such cases where no substantial actual or apparent conflict of interest exists, the appointing official, upon a consideration of all pertinent circumstances, may prevent the applicability of section 4(b)(2) to the case by determining in writing that the financial interest, employment, or official relation to a person described in paragraph (2) is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such Commissioner or employee.

This language is taken from a comparable provision of the general conflict of interest laws revised by the Congress in 1962 (sec. 208(b), Public Law 87–849, 76 Stat. 1119, approved Oct. 23, 1962).

CONCLUSION

The committee wishes to emphasize that this legislation merely provides relief from some of the more stringent special rules applicable to the financial interest, etc., of members and employees of the FCC. Subsection 4(b) of the Communications Act, as amended, continues to apply to such persons strict standards with respect to the primary fields of Commission regulatory activity, i.e., broadcasters and communications common carriers. In addition, members and employees of the FCC continue to be subject to any pertinent provisions of the general conflicts of interest law (Public Law 87–849), and to Executive Order 11222 (30 F.R. 6469, May 8, 1965). It is only "special Government employees" and executive reservists who are exempt from the additional specific restrictions imposed upon members and employees of the FCC.

These changes thus accord with the view followed in both the 1962 general revision of the conflict of interest law and Executive Order 11222 that Government employees should be free to engage in lawful financial transactions to the same extent as private citizens where no real conflict of interest exists. (See e.g., H. Rept. 748, 87th Cong., 1st sess., p. 6, and sec. 203 of Executive Order 11222, May 8, 1965, 30 F.R. 6469.)

AGENCY COMMENTS

Letter from the Chairman of the Federal Communications Commission requesting this legislation dated April 8, 1965, together with the Commission's explanatory statement; letter from the General Counsel of the Treasury dated May 28, 1965; letter from the Comptroller General of the United States dated June 1, 1965; and letter from the U.S. Civil Service Commission dated June 18, 1965, are set forth below:

FEDERAL COMMUNICATIONS COMMISSION,
Washington, D.C., April 8, 1965.

THE VICE PRESIDENT,
U.S. Senate, Washington, D.C.

DEAR MR. VICE PRESIDENT: The Commission has adopted as part of its legislative program for the 89th Congress a proposal to amend section 4 of the Communications Act with respect to commissioners, employees, and executive reservists of the Commission.

The proposed amendment revises the provisions dealing with financial interests of Commissioners and Commission employees and provides certain exceptions for "Special Government employees" and executive reservists.

The Commission's draft bill to accomplish the foregoing objective was submitted to the Bureau of the Budget for its consideration.

We have now been advised by that Bureau that from the standpoint of the administration's program there would be no objection to the presentation of the draft bill to the Congress for its consideration. Accordingly, there are enclosed six copies of our draft bill and explanatory statement on this subject.

The attached proposal combines three earlier Commission proposals without changing their substance. The earlier proposals were submitted to the 88th Congress and introduced in the Senate as S. 1504, S. 2819, and S. 3033.

The consideration by the Senate of the proposed amendments to the Communications Act of 1934 would be greatly appreciated. The Commission would be most happy to furnish any additional information that may be desired by the Senate or by the committee to which this proposal is referred.

Yours sincerely,

E. WILLIAM HENRY, *Chairman.*

EXPLANATION OF BILL TO AMEND SECTION 4 OF THE COMMUNICATIONS ACT OF 1934, AS AMENDED, WITH RESPECT TO COMMISSIONERS, EMPLOYEES, AND EXECUTIVE RESERVISTS OF THE FEDERAL COMMUNICATIONS COMMISSION

In the 88th Congress, bills were introduced at the request of the Federal Communications Commission to amend section 4 of the Communications Act of 1934 with respect to Commissioners and employees (S. 3033 and H.R. 12394), special Government employees (S. 2319 and H.R. 8155), and executive reservists (S. 1504 and H.R. 6019). No hearings were held on any of these bills. To assist Congress in the consideration of these measures, we have consolidated them into this one proposal without changing their substance.

Section 4(b) of the Communications Act of 1934 provides as follows:

"(b) Each member of the Commission shall be a citizen of the United States. No member of the Commission or person in its employ shall be financially interested in the manufacture or sale of radio apparatus or of apparatus for wire or radio communication; in communication by wire or radio or in radio transmission of energy; in any company furnishing services or such apparatus to any company engaged in communication by wire or radio or to any company manufacturing or selling apparatus used for communication by wire or

radio; or in any company owning stocks, bonds, or other securities of any such company; nor be in the employ of or hold any official relation to any person subject to any of the provisions of this act, nor own stocks, bonds, or other securities of any corporation subject to any of the provisions of this act. Such Commissioners shall not engage in any other business, vocation, profession, or employment. Any such Commissioner serving as such after 1 year from the date of enactment of the Communications Act Amendments, 1952, shall not for a period of 1 year following the termination of his service as a Commissioner represent any person before the Commission in a professional capacity, except that this restriction shall not apply to any Commissioner who has served the full term for which he was appointed. Not more than four members of the Commission shall be members of the same political party."

Proposed paragraph (1) of subsection (b) of section 4 includes, without substantive changes, all existing provisions of that subsection dealing with Commissioners except as to their financial interests. Proposed paragraph (2) is the portion which does make important substantive changes. It revises the provisions dealing with the financial interests of Commissioners and Commission employees. The need for these changes is discussed in part I of this explanatory memorandum. To take care of special problems, proposed paragraph (3) exempts from the revised financial interest standards of paragraph (2) the following: (i) "special Government employees" (discussed in pt. II), (ii) executive reservists not otherwise employed by the Government in a full-time capacity, and (iii) executive reservists when employed full time in time of war or during periods of national emergency declared by the President (discussed in pt. III). Section 2 of the proposed bill repeals the second sentence of subsection (j) of section 4 as redundant.

I

Conflict-of-interest provisions in the law have the highly salutary purpose of insuring that Government officials act in the public interest and maintain their affairs so that no actual or apparent personal financial motivations cloud their official decisions. With this objective, we are in full accord.

However, section 4(b) of the Communications Act, adopted in 1934 under quite different circumstances than prevail today, goes far beyond recent congressional and administration pronouncements in this area and is substantially inconsistent with current national policy.

Congress in 1962 extensively revised chapter 11 of title 18, United States Code, dealing with bribery, and conflicts of interest (Public Law 87–849 approved Oct. 23, 1963). Section 208 of that revision requires nonparticipation by officers or employees in matters in which they have financial interests. It states:

"(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other

particular matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest—

"Shall be fined not more than $10,000, or imprisoned not more than 2 years, or both.

"(b) Subsection (a) hereof shall not apply (1) if the officer or employee first advises the Government official responsible for appointment to his position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee, or (2) if, by general rule or regulation published in the Federal Register, the financial interest has been exempted from the requirements of clause (1) hereof as being too remote or too inconsequential to affect the integrity of Government officers' or employees' services."

In certain highly specialized fields such as communications, it is recognized that some basis exists for additional restrictions—for example, with respect to investments of Commissioners and employees in companies regulated by the agency. In this respect, the Communications Act, proscribing certain activities and investments of Commissioners and Commission employees, is much more restrictive than are the statutes of other regulatory agencies, which as a general rule, apply only to Commissioners.[1]

Recent pronouncements of both the administration and the Congress lend vital support to the view that conflict-of-interest provisions, while they must adequately protect the public interest, need not go beyond what is necessary to insure that protection. Thus, President Kennedy, in his message to the Congress on April 27, 1961, recommending changes in the conflict-of-interest laws, stated: "But if the (existing general) statutes often leave important areas unregulated, they also often serve as a bar to securing important personal services for the Government through excessive regulation when no ethical problem really exists."

And Congress has expressed its attitude with respect to this general problem in the legislative history of the 1962 amendments to the conflict-of-interest statutes. The House report (H. Rept. 748, 87th Cong., 1st sess., p. 6) states: "It is also fundamental to the effectiveness of democratic government, that, to the maximum extent possible, the most qualified individuals in the society serve its Government. Accordingly, legal protections against conflicts of interest must be so designed as not unnecessarily or unreasonably to impede the recruitment and retention by the Government of those men and women who are most qualified to serve it. An essential principle underlying the staffing of our governmental structure is that its

[1] The more liberal provisions of the ICC act (49 U.S.C. 305) apply to members, examiners and members of a joint board; the CAB prohibition applies only to members of the Board (49 U.S.C. 1321(b)); restrictions at FAA are on the Administrator and Deputy Administrator but not on employees of the agency (49 U.S.C. 1341(b) and 1342(b)); restrictions against financial interests with respect to the Federal Power Commission apply only to Commissioners (16 U.S.C. 792); employees are included in the case of the Federal Maritime Commission (46 U.S.C. 1111(b)).

employees should not be denied the opportunity available to all other citizens, to acquire and retain private economic and other interests, except where actual or potential conflicts with the responsibility of such employees to the public interest cannot be avoided." [2]

Thus, the Commission is not asking for any special treatment in this area, but is seeking to have the antiquated provisions of its statute modified to reflect the present general law and to avoid obvious inequities which, through changed cricumstances since its enactment, give the Communications Act potentially greater coverage than we feel was either intended or envisioned.

There is no legislative history to explain the meaning Congress attached to section 4(b). Since its enactment, however, far-reaching changes have occurred in the Communications art, and the Commission now has more than a million licensees. Thus, every corporate executive plane using radio must have a license from the FCC. States and municipalities are licensees of police and fire radio systems. In fact, practically every facet of the industrial complex (farming mining, fishing, manufacturing, transportation, public utilities, etc.) uses radio communication as an aid to business operations and is, therefore, subject to the licensing provisions of the Communications Act.

The full import of this vast growth in licensing activity is itself sufficient to cause a reevaluation of the coverage of section 4(b). But even beyond this is another independent factor also tending to broaden the potential coverage of 4(b)'s existing language. That is the increased diversification of activity and financial interests of companies which has occurred in the past three decades since the section's enactment. Thus, many companies, through a complex of corporate interrelationships and business organizations, may have some remote interest in a licensee of the Commission—which fact itself might require considerable research to uncover.

These factors have so changed the factual bases on which any worthwhile approach to the problem should be founded, that a re-examination of the entire area in the light of present conditions appears warranted.

Even as to companies directly involved in broadcasting or communications common carriers—the effect of the growth of mutual funds must be considered. Thus, almost any mutual fund would likely contain some shares of A.T. & T., GE, RCA, or some such company which—as noted herein—we agree Commissioners and employees should not be permitted to invest in directly. However, where the employee's financial interest in such company—through investment in shares of a mutual fund—is so remote or inconsequential that he would not be barred under 18 U.S.C. 208 from participation in matters involving such companies, then the Communications Act should be clarified to permit him to hold such investments.

The effects of such wide disparity between the potential reach of section 4(b) of the Communications Act and existing national policy are difficult to evaluate but would all be of an adverse nature. Thus, it can be safely presumed that its broad restrictions have the tendency to discourage potential applicants for employment with the Com-

[2] S. Rept. 2218, 87th Cong., 2d sess., also quotes from President Kennedy's Apr. 27, 1961, special message that some of the statutes "create wholly unnecessary obstacles to recruiting qualified people for Government service." The report refers to this as the "consensus" of views, p. 5.

mission.[3] And Commission personnel are distressed with the circumstance that an investment, considered safe, is found to be in violation of section 4(b).

The proposed amendment would continue to prevent the same types of activities—i.e., investment, employment by, or holding "official relation to" certain types of companies. It would continue to apply these prohibitions both to Commissioners and Commission employees. It would continue to preclude direct investment by Commissioners and Commission employees in broadcasting or communications common carriers, the primary fields of Commission regulatory activity. Moreover, it would continue to apply to relationships with and investments in companies a substantial part of whose activities consists of the manufacture or sale of radio apparatus or of apparatus for wire or radio communication or the providing of services to radio broadcasters or to common carriers offering communication services by wire or radio. The language also adds a specific reference to prohibit official relationships with or investment in companies a substantial part of whose activities is the installation, servicing, or maintenance of apparatus used for the transmission of communications by wire or radio. These provisions would, for example, preclude investment in networks, manufacturers of telephones, radio and television sets, etc. However, a furniture store which happens to include a broadcast licensee among its customers would not ordinarily be a prohibited investment, nor would a department store which handles television sets among countless thousands of other items. Such operations clearly have no bearing upon any conflicts of interest, real or apparent, which the section is designed to prevent.

This part of the proposed amendment, finally, would extend to investment, etc., in a holding company, mutual fund, or other investment company whose activities are concentrated substantially in broadcasting, communications by wire, or the other mentioned activities.

In such circumstances, the nonparticipation test of Public Law 87–849 could well apply, i.e., whether the investment is so substantial as likely to affect the integrity of the services which the Government may expect or whether it is too remote or inconsequential to affect the integrity of such services. (See 18 U.S.C. 208(b) quoted above.)

The proposed amendment would, however, make clear that it is not intended to cover a multitude of companies whose incidental use of radio, etc., could unnecessarily and unfairly limit the investment opportunities available to Commission employees contrary to the expressed congressional and administration policy of the 1952 amendments to the general conflict-of-interest laws. The Communications Act of 1934, as amended, the substantive statute under which the Commission operates, should be amended to conform to this overall policy.

The Commission agrees that actual or apparent conflicts of interest should be avoided and prohibited. However, as shown, we believe the limitations of section 4(b) potentially go far beyond what was ever envisioned and the section's prohibitions are certainly much more extensive than required in order to avoid actual conflicts of interest or even the "appearance of evil."

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[3] Unlike the general conflict-of-interest statute which forbids participation in matters in which an employee has a financial interest (10 U.S.C. 200), sec. 4(b) does not have a provision for waiver of insubstantial financial interests.

The general conflict-of-interest laws—revised in 1962, together with some additional requirements as contained in the proposed amendment—directed to this agency and covering the major fields of Commission activity, would seem to provide adequate statutory standards to protect the public interest in this area.

Additionally, the President, by Executive order (Executive Order 10939, May 5, 1961, 26 F.R. 3951), has prescribed standards of conduct for Presidential appointees. And the Commission, by administrative order (see, e.g., Revised Administrative Order No. 10, FCC 63–234, Mar. 8, 1963), imposes a number of restrictions on employee conduct such as outside employment. Should any circumstances arise where further restrictions appear needed, the Commission could act administratively on the matter.

II

The proposed amendment exempts from the financial interest provisions of subsection (b) of section 4 "special Government employees" as that term is defined in Public Law 87–849, 76 Stat. 1119, approved October 23, 1962. The broad scope of existing section 4(b), or even of section 4(b)(2) as herein proposed to be amended, stands as an obstacle to the use of part-time consultants contemplated by Public Law 87–849, which has liberalized the conflict-of-interest standards as they apply to special Government employees. That bill is designed to "help the Government obtain the temporary or intermittent services of persons with special knowledge and skills whose principal employment is outside the Government." (Attorney General's "Memorandum Regarding Conflict-of-Interest Provisions of Public Law 87–849," dated Jan. 28, 1963 (28 F.R. 985).)

Thus, a "special Government employee" could own stock or business interests in the communications industry while he is employed on a part-time basis by the Commission. Such an employee would continue to remain fully subject to all the conflict-of-interest standards now contained in Public Law 87–849. And in the event a "special Government employee" should become a regular employee of the Commission, or a member thereof, he would then become subject to section 4(b)(2) of the Communications Act. In short, it is not intended to confer on "special Government employees" any rights beyond those now set out in Public Law 87–849.

III

Paragraph 3 of the proposed revision of subsection (b) of section 4 of the Communications Act would exempt from the financial interest provisions of such section persons acting as executive reservists pursuant to subsection (e) of section 710 of the Defense Production Act of 1950, as amended (69 Stat. 583; 50 U.S.C. App. 2160(e)), and not otherwise employed by the Government in a full-time capacity and those executive reservists employed full time in time of war or during periods of national emergency declared by the President.

The executive reserve program, approved in Congress in 1955 as an amendment to section 710 of the Defense Production Act (50 U.S.C. App. 2160(e)) authorized the President to provide for the establishment and training of a nucleus executive reserve for employment in executive positions in Government during periods of emer-

gency. It further authorized the President to provide by regulation for the exemption of members of such reserve from the operation of the conflict-of-interest provisions in sections 281, 283, 284, 434, and 1914 of title 18 of the United States Code and section 190 of the Revised Statutes (sec. 99 of title 5).[4] The President exercised the authority thus granted him and promulgated, on February 15, 1956, Executive Order No. 10660 establishing the National Defense Executive Reserve. That Executive order has since been amended in minor respects.

A number of departments and agencies of the Federal Government, including the Federal Communications Commission, have established units of the National Defense Executive Reserve, pursuant to the foregoing authority. In the case of the Federal Communications Commission, its reservists have been given broad training at periodic intervals in the work of the various bureaus and offices to which they have been designated. Such training is designed with the objective of providing these reservists with the capability of fulfilling the executive position in such bureaus and offices involving the administration of the Communications Act. Thus, in the event of their mobilization in a national emergency, such reservists will have had the necessary training to assume the duties and responsibilities of such bureaus and offices and to perform such other duties and responsibilities as may be duly delegated to the Commission in a national emergency.

For the purpose of recruitment for the executive reserve training program of the Commission, the financial interest provisions of section 4(b) of the Communications Act have been found to be unduly restrictive and have deterred well-qualified persons from accepting appointment for training as executive reservists in the Commission's unit of the National Defense Executive Reserve. It is these people who, by reason of their past employment in the Commission or employment in executive positions in the communications industry, are the best qualified and most valuable to serve the Government as full-time Commission employees in periods of national emergency or time of war.

Finally, the proposal would repeal as unnecessary the second sentence of subsection (j) of section 4, which appears redundant in the light of section 208 of title 18.[5]

In view of the foregoing, the Commission strongly urges adoption of this proposal as one of important practical significance to its employees and one which can be accomplished consistent with the recent expressions of congressional and administration intent, while providing full protection to the public interest in leaving administrative proceedings free from actual or potential conflicts of interest.

Adopted: November 12, 1964.

Commissioner Ford absent.

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[4] Public Law 87-849 approved Oct. 23, 1962, and effective 90 days after the date of its enactment, provides in sec. 2 thereof that "All exemptions from the provisions of secs. 281, 282, 283, 284, 434 or 1914 of title 18 of the United States Code heretofore created or authorized by statute which are in force on the effective date of this act shall, on and after that date, be deemed to be exemptions from secs. 203, 204, 205, 207, 208, or 209, respectively, of title 18 of the United States Code except to the extent that they affect officers or employees of the executive branch of the U.S. Government, of any independent agency of the United States, or of the District of Columbia, as to whom they are no longer applicable." Further, sec. 3 of said Public Law 87-849 reads as follows: "sec. 190 of the Revised Statutes (5 U.S.C. 99) is repealed."

[5] That sentence provides: "* * * No Commissioner shall participate in any hearing or proceeding in which he has a pecuniary interest." It would seem that nonparticipation by a Commissioner in any hearing or proceeding in which he has a pecuniary interest (sec. 4(j), Communications Act) is, if anything, not as broad as the nonparticipation in a wider variety of activities enumerated by 18 U.S.C. 208 in which, to his knowledge, he, his spouse, minor child, etc., has a financial interest.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., May 28, 1965.

Hon. WARREN G. MAGNUSON
Chairman, Committee on Commerce,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 1948, to amend the Communications Act of 1934, as amended, with respect to commissioners, employees, and executive reservists of the Federal Communications Commission.

The proposed legislation would revise the provisions of the Communications Act of 1934 dealing with financial interests of Commissioners and commission employees and provides certain exceptions for "special Government employees" and executive reservists.

The proposed legislation is not of primary interest to this Department and the Department has no comment to make as to its general merits.

The Department has been advised by the Bureau of the Budget that there is no objection from the standpoint of the administration's program to the submission of this report to your committee.

Sincerely yours,

FRED B. SMITH,
Acting General Counsel.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., June 1, 1965.

B–152955.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate.

DEAR MR. CHAIRMAN: Your letter of May 13, 1965, transmitted copies of S. 1948, S. 1951, and S. 1952 and requested our comments thereon.

S. 1948 proposes to amend subsection (b) of section 4 of the Communications Act of 1934, as amended, 47 U.S.C. 154(b) (supp. V), with respect to commissioners, employees, and executive reservists of the Federal Communications Commission. The bill would revise the conditions concerning the financial interest of commissioners and employees that are now imposed upon them with respect to their appointment or employment with that agency. Also, the bill would exempt from such financial interest provisions "special Government employees" as defined in subsection 202(a) of the act of October 23, 1962, Public Law 87–849, 76 Stat. 1121, 18 U.S.C. 202(a), and persons acting as executive reservists pursuant to subsection (e) of section 710 of the Defense Production Act of 1950, as amended, 69 Stat. 583, 50 U.S.C. app. 2160(e), and not otherwise employed by the Government in a full-time capacity and those executive reservists employed full-time in time of war or during periods of national emergency declared by the President.

Other than the explanation made a part of the record at the time S. 1948 was introduced, we have no special information as to the desirability of amending the Communications Act of 1934 as proposed therein. Consequently, and since it appears that the matter is

primarily a question of policy for determination by the Congress, we offer no recommendations concerning the merits of the bill.

As a technical matter, the citation to subsection (e) of section 710 of the Defense Production Act of 1950 appearing on line 10 of page 3 of the bill should be 69 Stat. 583 rather than 96 Stat. 583.

The remaining bills S. 1951 and S. 1952, are the subject of separate communications.

Sincerely yours,

JOSEPH CAMPBELL,
Comptroller General of the United States.

U.S. CIVIL SERVICE COMMISSION,
Washington, D.C., June 18, 1965.

Hon. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
U.S. Senate, New Senate Office Building.

DEAR MR. CHAIRMAN: This is in further reply to your letter of May 13, 1965, requesting the Commission's views on S. 1948, a bill to amend the Communications Act of 1934, as amended, with respect to Commissioners, employees, and executive reservists of the Federal Communications Commission.

The Civil Service Commission has no comments to offer with respect to this bill as its subject is special to the Federal Communications Commission and does not have general application outside that agency.

The Bureau of the Budget advises that from the standpoint of the administration's program there is no objection to the submission of this report.

By direction of the Commission.

Sincerely yours,

JOHN W. MACY, JR., *Chairman.*

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italic; and existing law in which no change is proposed is shown in roman):

COMMUNICATIONS ACT OF 1934, AS AMENDED

PROVISIONS RELATING TO THE COMMISSION

SEC. 4. (a) * * *.

[(b) Each member of the Commission shall be a citizen of the United States. No member of the Commission or person in its employ shall be financially interested in the manufacture or sale of radio apparatus or of apparatus for wire or radio communication; in communication by wire or radio or in radio transmission of energy; in any company furnishing services or such apparatus to any company engaged in communication by wire or radio or to any company manufacturing or selling apparatus used for communication by wire or radio; or in any company owning stocks, bonds, or other securities of any such company; nor be in the employ of or hold any official

relation to any person subject to any of the provisions of this Act, nor own stocks, bonds, or other securities of any corporation subject to any of the provisions of this Act. Such commissioners shall not engage in any other business, vocation, profession, or employment. Any such commissioner serving as such after one year from the date of enactment of the Communications Act Amendments, 1952, shall not for a period of one year following the termination of his service as a commissioner represent any person before the Commission in a professional capacity, except that this restriction shall not apply to any commissioner who has served the full term for which he was appointed. Not more than four members of the Commission shall be members of the same political party.]

(b)(1) Each member of the Commission shall be a citizen of the United States. A commissionsr shall not engage in any other business, vocation, profession, or employment. He shall not, for a period of one year following the termination of his service as a commissioner, represent any person before the Commission in a professional capacity, except that this restriction shall not apply to any commissioner who has served the full term for which he was appointed. Not more than four members of the Commission shall be members of the same political party.

(2) No member of the Commission or person in its employ shall have a financial interest in, be employed by, or have any official relation to—

(A) any person engaged in radio broadcasting;

(B) any person engaged in communication by wire or radio as a common carrier;

(C) any person a substantial part of whose activities consists of the manufacture or sale of radio apparatus for wire or radio communication;

(D) any person a substantial part of whose activities consists of the installation, servicing, operation, or maintenance of apparatus used for the transmission of communications by wire or radio;

(E) any person a substantial part of whose activities consists of the providing of services to any other person a substantial part of whose activities consists of radio broadcasting or communications by wire or radio as a common carrier; or

(F) a holding company, mutual fund, or other investment company whose investments are concentrated substantially in the areas covered by clauses (A) through (E) of this paragraph (2).

(3) Paragraph (2) of subsection (b) of this section shall not apply—

(A) to a "special Government employee" as defined in section 202(a) of chapter 11 of title 18 of the United States Code; or

(B) to persons acting as executive reservists pursuant to subsection (e) of section 710 of the Defense Production Act of 1950, as amended (96 Stat. 583, 50 U.S.C. App. 2160(e)), and (i) not otherwise employed by the Government in a full-time capacity, or (ii) when employed full time in time of war or during periods of national emergency declared by the President.

(4) Paragraph (2) of subsection (b) of this section shall not apply if the Commissioner or employee advises the Government official responsible for appointment to his position of all pertinent circumstances and receives a written determination made by such official that the financial interest, employment, or official relation to a person described in paragraph (2) is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such Commissioner or employee.

(c) * * *

(j) The Commission may conduct its proceedings in such manner as will best conduct to the proper dispatch of business and to the ends of justice. [No commissioner shall participate in any hearing or proceeding in which he has a pecuniary interest.] Any party may appear before the Commission and be heard in person or by attorney. Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of any party interested. The Commission is authorized to withhold publication of records or proceedings containing secret information affecting the national defense.

APPENDIX

DEPARTMENT OF JUSTICE

OFFICE OF THE ATTORNEY GENERAL

MEMORANDUM REGARDING CONFLICT OF INTEREST PROVISIONS OF PUBLIC LAW 87–849

JANUARY 28, 1963.

Public Law 87–849, "To strengthen the criminal laws relating to bribery, graft, and conflicts of interest, and for other purposes," came into force January 21, 1963. A number of departments and agencies of the Government have suggested that the Department of Justice prepare and distribute a memorandum analyzing the conflict of interest provisions contained in the new act. I am therefore distributing the attached memorandum.

One of the main purposes of the new legislation merits specific mention. That purpose is to help the Government obtain the temporary or intermittent services of persons with special knowledge and skills whose principal employment is outside the Government. For the most part the conflict of interest statutes superseded by Public Law 87–849 imposed the same restraints on a person serving the Government temporarily or intermittently as on a full-time employee, and those statutes often had an unnecessarily severe impact on the former. As a result, they impeded the departments and agencies in the recruitment of experts for important work. Public Law 87–849 meets this difficulty by imposing a lesser array of prohibitions on temporary and intermittent employees than on regular employees. I believe that a widespread appreciation of this aspect of the new law will lead to a significant expansion of the pool of talent on which the departments and agencies can draw for their special needs.

ROBERT F. KENNEDY, *Attorney General.*

MEMORANDUM RE THE CONFLICT OF INTEREST PROVISIONS OF PUBLIC LAW 87–849, 76 Stat. 1119, APPROVED OCTOBER 23, 1962

INTRODUCTION

Public Law 87–849, which came into force January 21, 1963, affected seven statutes which applied to officers and employees of the Government and were generally spoken of as the "conflict of interest" laws. These included six sections of the criminal code, 18 U.S.C. 216, 281, 283, 284, 434 and 1914, and a statute containing no penalties, section 190 of the Revised Statutes (5 U.S.C. 99). Public Law 87–849 (sometimes referred to hereinafter as "the Act") repealed section 190

and one of the criminal statutes, 18 U.S.C. 216, without replacing them.[1] In addition it repealed and supplanted the other five criminal statutes. It is the purpose of this memorandum to summarize the new law and to describe the principal differences between it and the legislation it has replaced.

The Act accomplished its revisions by enacting new sections 203, 205, 207, 208 and 209 of title 18 of the United States Code and providing that they supplant the above-mentioned sections 281, 283, 284, 434 and 1914 of title 18 respectively.[2] It will be convenient, therefore, after summarizing the principal provisions of the new sections, to examine each section separately, comparing it with its precursor before passing to the next. First of all, however, it is necessary to describe the background and provisions of the new 18 U.S.C. 202(a), which has no counterpart among the statutes formerly in effect.

SPECIAL GOVERNMENT EMPLOYEES—NEW 18 U.S.C. 202(a)

In the main the prior conflict of interest laws imposed the same restrictions on individuals who serve the Government intermittently or for a short period of time as on those who serve full-time. The consequences of this generalized treatment were pointed out in the following paragraph of the Senate Judiciary Committee report on the bill which became Public Law 87–849:[3]

"In considering the application of present law in relation to the Government's utilization of temporary or intermittent consultants and advisers, it must be emphasized that most of the existing conflict-of-interest statutes were enacted in the 19th century—that is, at a time when persons outside the Government rarely served it in this way. The laws were therefore directed at activities of regular Government employees, and their present impact on the occasionally needed experts—those whose main work is performed outside the Government—is unduly severe. This harsh impact constitutes an appreciable deterrent to the Government's obtaining needed part-time services."

The recruiting problem noted by the Committee generated a major part of the impetus for the enactment of Public Law 87–849. The Act dealt with the problem by creating a category of Government employees termed "special Government employees" and by excepting persons in this category from certain of the prohibitions imposed on ordinary employees. The new 18 U.S.C. 202(a) defines the term "special Government employee" to include, among others, officers and employees of the departments and agencies who are appointed or employed to serve, with or without compensation, for not more than

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[1] Section 190 of the Revised Statutes (5 U.S.C. 99), which was repealed by section 3 of Public Law 87–849, applied to a former officer or employee of the Government who had served in a department of the executive branch. It prohibited him, for a period of two years after his employment had ceased, from representing anyone in the prosecution of a claim against the United States which was pending in that or any other executive department during his period of employment. The subject of postemployment activities of former Government officers and employees was also dealt with in another statute which was repealed, 18 U.S.C. 284. Public Law 87–849 covers this subject in a single section enacted as the new 18 U.S.C. 207.

18 U.S.C. 216, which was repealed by section 1(c) of Public Law 87–849, prohibited the payment to or acceptance by a Member of Congress or officer or employee of the Government of any money or thing of value for giving or procuring a Government contract. Since this offense is within the scope of the newly enacted 18 U.S.C. 201 and 18 U.S.C. 203, relating to bribery and conflicts of interest, respectively, section 216 is no longer necessary.

[2] See section 2 of Public Law 87–849. 18 U.S.C. 281 and 18 U.S.C. 283 were not completely set aside by section 2 but remain in effect to the extent that they apply to retired officers of the Armed Forces (see "Retired Officers of the Armed Forces," *infra*).

[3] S. Rept. 2213, 87th Cong., 2d sess., p. 6.

130 days during any period of 365 consecutive days either on a full-time or intermittent basis.

SUMMARY OF THE MAIN CONFLICT-OF-INTEREST PROVISIONS OF PUBLIC LAW 87–849

A regular officer or employee of the Government—that is, one appointed or employed to serve more than 130 days in any period of 365 days—is in general subject to the following major prohibitions (the citations are to the new sections of title 18):

1. He may not, except in the discharge of his official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest. This prohibition applies both to paid and unpaid representation of another (18 U.S.C. 203 and 205).

2. He may not participate in his governmental capacity in any matter in which he, his spouse, minor child, outside business associate or person with whom he is negotiating for employment has a financial interest (18 U.S.C. 208).

3. He may not, after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which he participated personally and substantially for the Government (18 U.S.C. 207(a)).

4. He may not, for 1 year after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of his official responsibility [4] during the last year of his Government service (18 U.S.C. 207(b)). This temporary restraint of course gives way to the permanent restraint described in paragraph 3 if the matter is one in which he participated personally and substantially.

5. He may not receive any salary, or supplementation of his Government salary, from a private source as compensation for his services to the Government (18 U.S.C. 209).

A special Government employee is in general subject only to the following major prohibitions:

1. (a) He may not, except in the discharge of his official duties, represent anyone else before a court or Government agency in a matter in which the United States is a party or has an interest and in which he has at any time participated personally and substantially for the Government (18 U.S.C. 203 and 205).

(b) He may not, except in the discharge of his official duties, represent anyone else in a matter pending before the agency he serves unless he has served there no more than 60 days during the past 365 (18 U.S.C. 203 and 205). He is bound by this restraint despite the fact that the matter is not one in which he has ever participated personally and substantially.

The restrictions described in subparagraphs (a) and (b) apply to both paid and unpaid representation of another. These restrictions in combination are, of course, less extensive than the one described

[4] The term "official responsibility" is defined by the new 18 U.S.C. 202(b) to mean "the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action."

in the corresponding paragraph 1 in the list set forth above with regard to regular employees.

2. He may not participate in his governmental capacity in any matter in which he, his spouse, minor child, outside business associate or person with whom he is negotiating for employment has a financial interest (18 U.S.C. 208).

3. He may not, after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and in which he participated personally and substantially for the Government (18 U.S.C. 207(a)).

4. He may not, for 1 year after his Government employment has ended, represent anyone other than the United States in connection with a matter in which the United States is a party or has an interest and which was within the boundaries of his official responsibility during the last year of his Government service (18 U.S.C. 207(b)). This temporary restraint of course gives way to the permanent restriction described in paragraph 3 if the matter is one in which he participated personally and substantially.

It will be seen that paragraphs 2, 3 and 4 for special Government employees are the same as the corresponding paragraphs for regular employees. Paragraph 5 for the latter, describing the bar against the receipt of salary for Government work from a private source, does not apply to special Government employees.

As appears below, there are a number of exceptions to the prohibitions summarized in the two lists.

COMPARISON OF OLD AND NEW CONFLICT OF INTEREST SECTIONS OF TITLE 18, UNITED STATES CODE

New 18 U.S.C. 203. Subsection (a) of this section in general prohibits a Member of Congress and an officer or employee of the United States in any branch or agency of the Government from soliciting or receiving compensation for services rendered on behalf of another person before a Government department or agency in relation to any particular matter in which the United States is a party or has a direct and substantial interest. The subsection does not preclude compensation for services rendered on behalf of another in court.

Subsection (a) is essentially a rewrite of the repealed portion of 18 U.S.C. 281. However, subsections (b) and (c) have no counterparts in the previous statutes.

Subsection (b) makes it unlawful for anyone to offer or pay compensation the solicitation or receipt of which is barred by subsection (a).

Subsection (c) narrows the application of subsection (a) in the case of a person serving as a special Government employee to two, and only two, situations. First, subsection (c) bars him from rendering services before the Government on behalf of others, for compensation, in relation to a matter involving a specific party or parties in which he has participated personally and substantially in the course of his Government duties. And second, it bars him from such activities in relation to a matter involving a specific party or parties, even though he has not participated in the matter personally and substantially, if it is pending in his department or agency and he has served therein more than 60 days in the immediately preceding period of a year.

New 18 U.S.C. 205. This section contains two major prohibitions. The first prevents an officer or employee of the United States in any branch or agency of the Government from acting as agent or attorney for prosecuting any claim against the United States, including a claim in court, whether for compensation or not. It also prevents him from receiving a gratuity, or a share or interest in any such claim, for assistance in the prosecution thereof. This portion of section 205 is similar to the repealed portion of 18 U.S.C. 283, which dealt only with claims against the United States, but it omits a bar contained in the latter—i.e., a bar against rendering uncompensated aid or assistance in the prosecution or support of a claim against the United States.

The second main prohibition of section 205 is concerned with more than claims. It precludes an officer or employee of the Government from acting as agent or attorney for anyone else before a department, agency or court in connection with any particular matter in which the United States is a party or has a direct and substantial interest.

Section 205 provides for the same limited application to a special Government employee as section 203. In short, it precludes him from acting as agent or attorney only (1) in a matter involving a specific party or parties in which he has participated personally and substantially in his governmental capacity, and (2) in a matter involving a specific party or parties which is before his department or agency, if he has served therein more than 60 days in the year past.

Since new sections 203 and 205 extend to activities in the same range of matters, they overlap to a greater extent than did their predecessor sections 281 and 283. The following are the few important differences between sections 203 and 205:

1. Section 203 applies to Members of Congress as well as officers and employees of the Government; section 205 applies only to the latter.

2. Section 203 bars services rendered for compensation solicited or received, but not those rendered without such compensation; section 205 bars both kinds of services.

3. Section 203 bars services rendered before the departments and agencies but not services rendered in court; section 205 bars both.

It will be seen that while section 203 is controlling as to Members of Congress, for all practical purposes section 205 completely overshadows section 203 in respect of officers and employees of the Government.

Section 205 permits a Government officer or employee to represent another person, without compensation, in a disciplinary, loyalty or other personnel matter. Another provision declares that the section does not prevent an officer or employee from giving testimony under oath or making statements required to be made under penalty for perjury or contempt.[5]

Section 205 also authorizes a limited waiver of its restrictions and those of section 203 for the benefit of an officer or employee, including a special Government employee, who represents his own parents, spouse or child, or a person or estate he serves as a fiduciary. The waiver is available to the officer or employee, whether acting for any

[5] These two provisions of section 205 refer to an "officer or employee" and not, as do certain of the other provisions of the Act, to an "officer or employee, including a special Government employee." However, it is plain from the definition in section 202(a) that a special Government employee is embraced within the comprehensive term "officer or employee." There would seem to be little doubt, therefore, that the instant provisions of section 205 apply to special Government employees even in the absence of an explicit reference to them.

such person with or without compensation, but only if approved by the official making appointments to his position. And in no event does the waiver extend to his representation of any such person in matters in which he has participated personnally and substantially or which, even in the absence of such participation, are the subject of his official responsibility.

Finally, section 205 gives the head of a department or agency the power, notwithstanding any applicable restrictions in its provisions or those of section 203, to allow a special Government employee to represent his regular employer or other outside organization in the performance of work under a Government grant or contract. However, this action is open to the department or agency head only upon his certification, published in the Federal Register, that the national interest requires it.

New 18 U.S.C. 207. Subsections (a) and (b) of this section contain postemployment prohibitions applicable to persons who have ended service as officers or employees of the executive branch, the independent agencies or the District of Columbia.[6] The prohibitions for persons who have served as special Government employees are the same as for persons who have performed regular duties.

The restraint of subsection (a) is against a former officer or employee's acting as agent or attorney for anyone other than the United States in connection with certain matters, whether pending in the courts or elsewhere. The matters are those involving a specific party or parties in which the United States is one of the parties or has a direct and substantial interest and in which the former officer or employee participated personally and substantially while holding a Government position.

Subsection (b) sets forth a 1-year postemployment prohibition in respect of those matters which were within the area of official responsibility of a former officer or employee at any time during the last year of his service but which do not come within subsection (a) because he did not participate in them personally and substantially. More particularly, the prohibition of subsection (b) prevents his personal appearance in such matters before a court or a department or agency of the Government as agent or attorney for anyone other than the United States.[7] Where, in the year prior to the end of his service, a former officer or employee has changed areas of responsibility by transferring from one agency to another, the period of his postemployment ineligibility as to matters in a particular area ends 1 year after his responsibility for that area ends. For example, if an individual transfers from a supervisory position in the Internal Revenue Service to a supervisory position in the Post Office Department and leaves that department for private employment 9 months later, he will be free of the restriction of subsection (b) in 3 months insofar as Internal Revenue matters are concerned. He will of course be bound by it for a year in respect of Post Office Department matters.

[6] The prohibitions of the two subsections apply to persons ending service in these areas whether they leave the Government entirely or move to the legislative or judicial branch. As a practical matter, however, the prohibitions would rarely be significant in the latter situation because officers and employees of the legislative and judicial branches are covered by sections 203 and 205.

[7] Neither section 203 nor section 205 prevents a special Government employee, during his period of affiliation with the Government, from representing another person before the Government in a particular matter only because it is within his official responsibility. Therefore the inclusion of a *former* special Government employee within the 1-year postemployment ban of subsection (b) may subject him to a temporary restraint from which he was free prior to the end of his Government service. However, since special Government employees usually do not have "official responsibility," as that term is defined in section 202(b), their inclusion within the 1-year ban will not have a widespread effect.

The proviso following subsections (a) and (b) authorizes an agency head, notwithstanding anything to the contrary in their provisions, to permit a former officer or employee with outstanding scientific qualifications to act as attorney or agent or appear personally before the agency for another in a matter in a scientific field. This authority may be exercised by the agency head upon a "national interest" certification published in the Federal Register.

Subsections (a) and (b) describe the activities they forbid as being in connection with "particular matter[s] involving a specific party or parties" in which the former officer or employee had participated. The quoted language does not include general rulemaking, the formulation of general policy or standards, or other similar matters. Thus, past participation in or official responsibility for a matter of this kind on behalf of the Government does not disqualify a former employee from representing another person in a proceeding which is governed by the rule or other result of such matter.

Subsection (a) bars permanently a greater variety of actions than subsection (b) bars temporarily. The conduct made unlawful by the former is *any action as agent or attorney*, while that made unlawful by the latter is a *personal appearance as agent or attorney*. However, neither subsection precludes post-employment activities which may fairly be characterized as no more than aiding or assisting another.[8] An individual who has left an agency to accept private employment may, for example, immediately perform technical work in his company's plant in relation to a contract for which he had official responsibility—or, for that matter, in relation to one he helped the agency negotiate. On the other hand, he is forbidden for a year, in the first case, to appear personally before the agency as the agent or attorney of his company in connection with a dispute over the terms of the contract. And he may at no time appear personally before the agency or otherwise act as agent or attorney for his company in such dispute if he helped negotiate the contract.

Comparing subsection (a) with the antecedent 18 U.S.C. 284 discloses that it follows the latter in limiting disqualification to cases where a former officer or employee actually participated in a matter for the Government. However, subsection (a) covers all matters in which the United States is a party or has a direct and substantial interest and not merely the "claims against the United States" covered by 18 U.S.C. 284. Subsection (a) also goes further than the latter in imposing a lifetime instead of a 2-year bar. Subsection (b) has no parallel in 18 U.S.C. 284 or any other provision of the former conflict of interest statutes.

It will be seen that subsections (a) and (b) in combination are less restrictive in some respects, and more restrictive in others, than the combination of the prior 18 U.S.C. 284 and 5 U.S.C. 99. Thus, former officers or employees who were outside the Government when the Act came into force on January 21, 1963, will in certain situations be enabled to carry on activities before the Government which were previously barred. For example, the repeal of 5 U.S.C. 99 permits an attorney who left an executive department for private practice a year before to take certain cases against the Government immediately

[8] Subsection (a), as it first appeared in H.R. 8140, the bill which became Public Law 87-849, made it unlawful for a former officer or employee to act as agent or attorney for, *or aid or assist*, anyone in a matter in which he had participated. The House Judiciary Committee struck the underlined words, and the bill became law without them. It should be noted also that the repealed provisions of 18 U.S.C. 283 made the distinction between one's acting as agent or attorney for another and his aiding or assisting another.

which would be subject to the bar of 5 U.S.C. 99 for another year. On the other hand, former officers or employees became precluded on and after January 21, 1963 from engaging or continuing to engage in certain activities which were permissible until that date. This result follows from the replacement of the 2-year bar of 18 U.S.C. 284 with the lifetime bar of subsection (a) in comparable situations, from the increase in the variety of matters covered by subsection (a) as compared with 18 U.S.C. 284 and from the introduction of the 1-year bar of subsection (b).

Subsection (c) of section 207 pertains to an individual outside the Government who is in a business or professional partnership with someone serving in the executive branch, an independent agency or the District of Columbia. The subsection prevents such individual from acting as attorney or agent for anyone other than the United States in any matters, including those in court, in which his partner in the Government is participating or has participated or which are the subject of his partner's official responsibility. Although included in a section dealing largely with postemployment activities, this provision is not directed to the postemployment situation.

The paragraph at the end of section 207 also pertains to individuals in a partnership but sets forth no prohibition. This paragraph, which is of importance mainly to lawyers in private practice, rules out the possibility that an individual will be deemed subject to section 203, 205, 207(a) or 207(b) solely because he has a partner who serves or has served in the Government either as a regular or a special Government employee.

New 18 U.S.C. 208. This section forbids certain actions by an officer or employee of the Government in his role as a servant or representative of the Government. Its trust is therefore to be distinguished from that of sections 203 and 205 which forbid certain actions in his capacity as a respresentative of persons outside the Government.

Subsection (a) in substance requires an officer or employee of the executive branch, an independent agency or the District of Columbia, including a special Government employee, to refrain from participating as such in any matter in which, to his knowledge, he, his spouse, minor child or partner has a financial interest. He must also remove himself from a matter in which a business or nonprofit organization with which he is connected or is seeking employment has a financial interest.

Subsection (b) permits the agency of an officer or employee to grant him an *ad hoc* exemption from subsection (a) if the outside financial interest in a matter is deemed not substantial enough to have an effect on the integrity of his services. Financial interests of this kind may also be made nondisqualifying by a general regulation published in the Federal Register.

Section 208 is similar in purpose to the former 18 U.S.C. 434 but prohibits a greater variety of conduct than the "transaction of business with * * * [a] business entity" to which the prohibition of section 434 was limited. In addition, the provision in section 208 including the interests of a spouse and others is new, as is the provision authorizing exemptions for insignificant interests.

New 18 U.S.C. 209. Subsection (a) prevents an officer or employee of the executive branch, an independent agency or the District of Columbia from receiving, and anyone from paying him, any salary or supplementation of salary from a private source as compensation

for his services to the Government. This provision uses much of the language of the former 18 U.S.C. 1914 and does not vary from that statute in substance. The remainder of section 209 is new.

Subsection (b) specifically authorizes an officer or employee covered by subsection (a) to continue his participation in a bona fide pension plan or other employee welfare or benefit plan maintained by a former employer.

Subsection (c) provides that section 209 does not apply to a special Government employee or to anyone serving the Government without compensation, whether or not he is a special Government employee.

Subsection (d) provides that the section does not prohibit the payment or acceptance of contributions, awards or other expenses under the terms of the Government Employees Training Act (72 Stat. 327, 5 U.S.C. 2301–2319).

STATUTORY EXEMPTIONS FROM CONFLICT OF INTEREST LAWS

Congress has in the past enacted statutes exempting persons in certain positions—usually advisory in nature—from the provisions of some or all of the former conflict of interest laws. Section 2 of the Act grants corresponding exemptions from the new laws with respect to legislative and judicial positions carrying such past exemptions. However, section 2 excludes positions in the executive branch, an independent agency and the District of Columbia from this grant. As a consequence, all statutory exemptions for persons serving in these sectors of the Government ended on January 21, 1963.

RETIRED OFFICERS OF THE ARMED FORCES

Public Law 87–849 enacted a new 18 U.S.C. 206 which provides in general that the new sections 203 and 205, replacing 18 U.S.C. 281 and 283, do not apply to retired officers of the armed forces and other uniformed services. However, 18 U.S.C. 281 and 283 contain special restrictions applicable to retired officers of the armed forces which are left in force by the partial repealer of those statutes set forth in section 2 of the Act.

The former 18 U.S.C. 284, which contained a 2-year disqualification against postemployment activities in connection with claims against the United States, applied by its terms to persons who had served as commissioned officers and whose active service had ceased either by reason of retirement or complete separation. Its replacement, the broader 18 U.S.C. 207, also applies to persons in those circumstances. Section 207, therefore applies to retired officers of the armed forces and overlaps the continuing provisions of 18 U.S.C. 281 and 283 applicable to such officers although to a different extent than did 18 U.S.C. 284.

VOIDING TRANSACTIONS IN VIOLATION OF THE CONFLICT OF INTEREST OR BRIBERY LAWS

Public Law 87–849 enacted a new section, 18 U.S.C. 218, which did not supplant a pre-existing section of the criminal code. However, it was modeled on the last sentence of the former 18 U.S.C. 216 authorizing the President to declare a Government contract void

which was entered into in violation of that section. It will be recalled that section 216 was one of the two statutes repealed without replacement.

The new 18 U.S.C. 218 grants the President and, under presidential regulations, an agency head the power to void and rescind any transaction or matter in relation to which there has been a "final conviction" for a violation of the conflict of interest or bribery laws. The section also authorizes the Government's recovery, in addition to any penalty prescribed by law or in a contract, of the amount expended or thing transferred on behalf of the Government.

Section 218 specifically provides that the powers it grants are "in addition to any other remedies provided by law." Accordingly, it would not seem to override the decision in *United States* v. *Mississippi Valley Generating Co.*, 364 U.S. 520 (1961), a case in which there was no "final conviction."

BIBLIOGRAPHY

Set forth below are the citations to the legislative history of Public Law 87–849 and a list of recent material which is pertinent to a study of the Act. The listed 1960 report of the Association of the Bar of the City of New York is particularly valuable. For a comprehensive bibliography of earlier material relating to the conflict of interest laws, see 13 Record of the Association of the Bar of the City of New York 323 (May 1958).

LEGISLATIVE HISTORY OF PUBLIC LAW 87–849 (H.R. 8140, 87TH CONG.)

1. Hearings of June 1 and 2, 1961 before the Antitrust Subcommittee (Subcommittee No. 5) of the House Judiciary Committee, 87th Cong., 1st sess., ser. 3, on *Federal Conflict of Interest Legislation.*
2. H.Rept. 748, 87th Cong., 1st sess.
3. 107 Cong. Rec. 14774.
4. Hearing of June 21, 1962 before the Senate Judiciary Committee, 87th Cong., 2d sess., on *Conflicts of Interest.*
5. S. Rept. 2213, 87th Cong., 2d sess.
6. 108 Cong. Rec. 20805 and 21130 (daily ed., October 3 and 4, 1962).

OTHER MATERIAL

1. President's special message to Congress, April 27, 1961, and attached draft bill, 107 Cong. Rec. 6835.
2. President's Memorandum of February 9, 1962 to the heads of executive departments and agencies entitled *Preventing Conflicts of Interest on the Part of Advisers and Consultants to the Government*, 27 F.R. 1341.
3. 42 Op. A.G. No. 6, January 31, 1962.
4. Memorandum of December 10, 1956 for the Attorney General from the Office of Legal Counsel re conflict of interest statutes, Hearings before the Antitrust Subcommittee (Subcommittee No. 5) of House Judiciary Committee, 86th Cong., 2d sess., ser. 17, pt. 2, p. 619.
5. Staff report of Antitrust Subcommittee (Subcommittee No. 5) of House Judiciary Committee, 85th Cong., 2d sess., *Federal Conflict of Interest Legislation* (Comm. Print 1958).
6. Report of the Association of the Bar of the City of New York, *Conflict of Interest and Federal Service* (Harvard Univ. Press 1960).

[F.R. Doc 63–1105; Filed, Jan. 31, 1963; 8:49 a.m.]

MEMORANDUM OF MAY 2, 1963

[PREVENTING CONFLICTS OF INTEREST ON THE PART OF SPECIAL GOVERNMENT EMPLOYEES]

MEMORANDUM TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

INTRODUCTION

Over the past twenty or more years departments and agencies of the Government have made increasing use of temporary or intermittent consultants and advisers who serve individually or on advisory bodies. The employment of highly skilled persons on a temporary or intermittent basis is in the interest of the Government and provides it with an indispensable source of expert advice and knowledge. However, since such persons have their principal employment outside the Government, conflict of interest problems arise from time to time.

More particularly, many persons serving the Government temporarily or intermittently are individuals with specialized scientific knowledge and skills whose regular work is in industry, research institutes or educational institutions. An individual employed by a university may act as an intermittent consultant not only for the Government but for a private firm and either his university or the firm or both may be engaged in work for or supported by the Government. A consultant to the Government may have other financial connections with firms doing business with the Government in the general area of his expertise and, therefore, his consultancy. The many possible interrelationships between a consultant's service to the Government and his own and his employer's or client's financial interests demonstrate that conflicts problems may often arise.

The temporary or intermittent adviser or consultant and the department or agency which employs him both must be alert to the possibility of conflicts. It is, of course, incumbent upon the adviser or consultant to familiarize himself with the laws and regulations which are applicable to him. The responsibility of the department or agency is equally great. It is important that it oversee his activities in order to insure that the public interest is protected from improper conduct on his part and that he will not, through ignorance or inadvertence, embarrass the Government or himself. It must assist him to understand the pertinent laws and regulations. It must obtain from him such information concerning his financial interests as is necessary to disclose possible conflicts. It must take measures to avoid the use of his services in any situation in which a violation of law or regulation is likely to occur. And it must take prompt and proper disciplinary or remedial action when a violation, whether intentional or innocent, is detected.

Prior to January 21, 1963, the date on which P.L. 87–849 (76 Stat. 1119) came into force, the restraints imposed by the conflict of interest laws on temporary or intermittent employees of the United States were largely the same as those imposed on persons regularly employed by the Government. However, in enacting P.L. 87–849, Congress recognized that these restraints were unduly restrictive, as applied to temporary and intermittent employees, and hindered the Govern-

ment in obtaining expert services for special needs. Congress dealt with these difficulties in the new statute by establishing a category of persons designated "special Government employees," and by making the restrictions imposed upon their private activities considerably less extensive than those applied to regular employees.

The term "special Government employee" is defined in new section 202 of Title 18, United States Code, which was enacted as a part of P.L. 87–849. The term includes, among others, officers and employees of the departments and agencies, including the District of Columbia, who are retained, designated, appointed or employed to serve, with or without compensation, for not more than 130 days during any period of 365 consecutive days, either on a full-time or intermittent basis, under any type of appointment of whatever duration.

The enactment of P.L. 87–849 has made it necessary for the departments and agencies utilizing temporary or intermittent personnel to revise their conflict of interest regulations with regard to such personnel. While the problems arising from the employment of such personnel will undoubtedly vary from one Government organization to another, and different regulations may in some instances be appropriate or necessary, I believe it is desirable to achieve the maximum uniformity possible in order to insure general standards of common application throughout the Government. This memorandum is designed to achieve that purpose. It supersedes my Memorandum of February 9, 1962 to the Heads of Executive Departments and Agencies, entitled "Preventing Conflicts of Interest on the Part of Advisers and Consultants to the Government" (27 F.R. 1341), which is hereby rescinded.

Conflict of Interest Statutes

P.L. 87–849 repealed the six basic conflict of interest laws which were discussed in my Memorandum of February 9, 1962, and replaced them with six new sections of Title 18 numbered 202, 203, 205, 207, 208 and 209. Sections 203 and 205 contain prohibitions affecting the activities of Government employees in their private capacities. As already noted, the prohibitions applicable to special Government employees are less stringent than those which affect regular employees—*i.e.*, those who are appointed to serve more than 130 days a year. Section 207 contains prohibitions affecting the activities of persons who leave the service of the Government. It applies with the same force to former special Government employees as to former regular employees. Section 208 sets forth a restriction of the activities of a Government employee in performing his functions as such. This section also applies with the same force to both categories of employees. Section 209, which prohibits a regular employee's receipt of compensation from private sources in certain circumstances, specifically excludes special Government employees from its coverage.

The new sections are set forth in full in the appendix to this memorandum. It will be noted that all but 18 U.S.C. 202, which is devoted to the definition of terms, carry criminal penalties. The restraints imposed by the four criminal sections which are applicable to temporary and intermittent advisers or consultants, and to other persons falling within the definition of a special Government employee, are considered below.

18 U.S.C. 203 and 205. These two sections in general operate to preclude a regular Government employee, except in the discharge of his official duties, from representing another person before a department, agency or court, whether with or without compensation, in a matter in which the United States is a party or has a direct and substantial interest. However, the two sections impose only the following major restrictions upon a special Government employee:

1. He may not, except in the discharge of his official duties, represent anyone else before a court or Government agency in a matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which he has at any time participated personally and substantially in the course of his Government employment.

2. He may not, except in the discharge of his official duties, represent anyone else in a matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and which is pending before the agency he serves. However, this restraint is not applicable if he has served the agency no more than 60 days during the past 365. He is bound by the restraint, if applicable, regardless of whether the matter is one in which he has ever participated personally and substantially.

These restrictions prohibit both paid and unpaid representation and apply to a special Government employee on the days when he does not serve the Government as well as on the days when he does.

Each department and agency should observe the following rules in obtaining and utilizing the services of a consultant, adviser or other temporary or intermittent employee:

(a) At the time of his original appointment and the time of each appointment thereafter, the department or agency should make its best estimate of the number of days during the following 365 on which it will require the services of the appointee. A part of a day should be counted as a full day for the purposes of this estimate, and a Saturday, Sunday or holiday on which duty is to be performed should be counted equally with a regular work day.

(b) Unless otherwise provided by law, an appointment should not extend for more than 365 days. In cases where an appointment extends beyond that period, an estimate as required by paragraph (a) should be made at the inception of the appointment and a new estimate at the expiration of each 365 days thereafter.

(c) If a department or agency estimates, pursuant to paragraph (a) or (b), that an appointee will serve more than 130 days during the ensuing 365, the appointee should not be carried on the rolls as a special Government employee and the department or agency should instruct him that he is regarded as subject to the prohibitions of sections 203 and 205 to the same extent as if he were to serve as a full-time employee. If the estimate is that he will serve no more than 130 days during the following 365 days, he should be carried on the rolls of the department or agency as a special Government employee and instructed that he is regarded as subject only to the restrictions of sections 203 and 205 described in paragraphs 1 and 2 above. Even if it becomes apparent, prior to the end of a period of 365 days for which a department or agency has made an estimate with regard to an appointee, that he has not been accurately classified, he should nevertheless continue to be deemed a special Government employee or not, as the case may be, for the remainder of that 365-day period.

(d) An employee who undertakes service with two departments or agencies shall inform each of his arrangements with the other. If both his appointments are made on the same date, the aggregate of the estimates made by the departments or agencies under paragraph (a) or (b) shall be deemed determinative of his classification by each. Notwithstanding anything to the contrary in paragraphs (a), (b) or (c), if after being employed by one department or agency, a special Government employee is appointed by a second to serve it in the same capacity, each department or agency should make an estimate of the amount of his service to it for the remaining portion of the 365-day period covered by the original estimate of the first. The sum of the two estimates and of the actual number of days of his service to the first department or agency during the prior portion of such 365-day period shall be deemed determinative of the classification of the appointee by each during the remaining portion. If an employee undertakes to serve more than two departments or agencies, they shall classify him in a manner similar to that prescribed in this paragraph in the case of two agencies. Each agency which employs special Government employees who serve other agencies shall designate an officer to coordinate the classification of such employees with such other agencies.

(e) In the case of a person who is serving as a member of an advisory committee, board or other group, and who is by virtue of his membership thereon an officer or employee of the United States, the requirements of paragraphs (a), (b), (c) and (d) should be carried out to the same extent as if he were serving the sponsoring department or agency separately and individually.

(f) The 60-day standard affecting a special Government employee's private activities before his department or agency is a standard of actual past service, as contrasted with the 130-day standard of estimated future service discussed above. As appears from paragraph 2 above, a special Government employee is barred from representing another person before his department or agency at times when he has served it for an aggregate of more than 60 days during the past 365. Thus, although once having been in effect, the statutory bar may be lifted later by reason of an intervening period of non-service. In other words, as a matter of law the bar may fluctuate in its effect during the course of a special Government employee's relationship with his department or agency.

(g) A part of a day should be counted as a full day in connection with the 60-day standard discussed in paragraph (f), above, and a Saturday, Sunday or holiday on which duty has been performed should be counted equally with a regular work day. Service performed by a special Government employee in one department or agency should not be counted by another in connection with the 60-day standard.

To a considerable extent the prohibitions of sections 203 and 205 are aimed at the sale of influence to gain special favors for private businesses and other organizations and at the misuse of governmental position or information. In accordance with these aims, it is desirable that a consultant or adviser or other individual who is a special Government employee, even when not compelled to do so by sections 203 and 205, should make every effort in his private work to avoid any personal contact with respect to negotiations for contracts or grants with the department or agency which he is serving if the subject

matter is related to the subject matter of his consultancy or other service. I recognize that this will not always be possible to achieve where, for example, a consultant or adviser has an executive position and responsibility with his regular employer which requires him to participate personally in contract negotiations with the department or agency he is advising. Whenever this is the case the consultant or adviser should participate in the negotiations for his employer only with the knowledge of a responsible government official. In other instances an occasional consultant or adviser may have technical knowledge which is indispensable to his regular employer in his efforts to formulate a research and development contract or a research grant and, for the same reason, it is in the interest of the Government that he should take part in negotiations for his private employer. Again, he should participate only with the knowledge of a responsible Government official.

Section 205 contains an exemptive provision dealing with a similar situation which may arise *after* a Government grant or contract has been negotiated. This provision in certain cases permits both the Government and the private employer of a special Government employee to benefit from his performance of work under a grant or contract for which he would otherwise be disqualified because he had participated in the matter for the Government or it is pending in an agency he has served more than 60 days in the past year. More particularly, the provision gives the head of a department or agency the power, notwithstanding any prohibition in either section 203 or 205, to allow a special Government employee to represent before such department or agency either his regular employer or another person or organization in the performance of work under a grant or contract. As a basis for this action, the department or agency head must first make a certification in writing, published in the Federal Register, that it is required by the national interest.

Section 205 contains three other exemptive provisions, all of which apply to both special and regular Government employees. The first permits one Government employee to represent another, without compensation, in a disciplinary, loyalty or other personnel matter. The second permits a Government employee to represent, with or without compensation, a parent, spouse, child, or person or estate he serves as a fiduciary, but only if he has the approval of the official responsible for appointments to his position and the matter involved is neither one in which he has participated personally or substantially nor one under his official responsibility. The term "official responsibility" is defined in 18 U.S.C. 202 to mean, in substance, the direct administrative or operating authority to control Government action. The third provision removes any obstacle in section 205 to a Government employee's giving testimony under oath or making statements required to be made under penalty for perjury or contempt.

18 U.S.C. 207. Section 207 applies to individuals who have left Government service, including former special Government employees. It prevents a former employee from representing another person in connection with certain matters in which he participated personally and substantially on behalf of the Government. The matters are those involving a specific party or parties in which the United States is also a party or has a direct and substantial interest. In addition, section 207 prevents a former employee, for a period of one year after

his employment has ceased, from appearing personally for another person in such matters before a court, department or agency if the matters were within the area of his official responsibility at any time during the last year of his Government service. It should be noted that a consultant or adviser usually does not have "official responsibility."

For the purposes of section 207, the employment of a special Government employee ceases on the day his appointment expires or is otherwise terminated, as distinguished from the day on which he last performs service.

18 U.S.C. 208. This section bears on the activities of Government personnel, including special Government employees, in the course of their official duties. In general, it prevents a Government employee from participating as such in a particular matter in which, to his knowledge, he, his spouse, minor child, partner, or a profit or non-profit enterprise with which he is connected has a financial interest. However, the section permits an employee's agency to grant him an *ad hoc* exemption if the interest is not so substantial as to affect the integrity of his services. Insignificant interests may also be waived by a general rule or regulation. Whether an agency should issue a general rule or regulation and, if it does so, what standards it should set are questions which should be resolved by each agency in the context of its particular responsibilities and activities.

The matters in which special Government employees are disqualified by section 208 are not limited to those involving a specific party or parties in which the United States is a party or has an interest, as in the case of sections 203, 205 and 207. Section 208 therefore undoubtedly extends to matters in addition to contracts, grants, judicial and quasi-judicial proceedings, and other matters of an adversary nature. Accordingly, a special Government employee should in general be disqualified from participating as such in a matter of any type the outcome of which will have a direct and predictable effect upon the financial interests covered by the section. However, the power of exemption may be exercised in this situation if the special Government employee renders advice of a general nature from which no preference or advantage over others might be gained by any particular person or organization. The power of exemption may of course be exercised also where the financial interests involved are minimal in value.

ETHICAL STANDARDS OF CONDUCT

Aside from the conflict of interest laws, there are elementary rules of ethics in the conduct of the public business by which all those who serve the Government are bound. That an individual may serve the Government only occasionally and for brief periods does not relieve him from the obligation to abide by those rules. That he may be needed to bring rare or specialized talents and skills to the Government does not mean that he should be considered for a waiver. The people of the nation are entitled to ethical behavior of the highest order in the conduct of their Government's affairs, from the occasional employee no less than from career personnel.

Although any discussion of standards of ethics is of course applicable to all special Government employees, it is especially important in connection with the work of advisers and consultants. The following remarks are therefore concerned with them in particular.

Inside Information. The first principle of eithical behavior for the temporary or intermittent consultant or adviser is that he must refrain from any use of his public office which is motivated by, or gives the appearance of being motivated by, the desire for private gain for himself or other persons, including particularly those with whom he has family, business or financial ties. The fact that the desired gain, if it materializes, will not take place at the expense of the Government makes his action no less improper.

An adviser or consultant must conduct himself in a manner devoid of the slightest suggestion that he is exploiting his Government employment for private advantage. Thus, a consultant or adviser must not, on the basis of any inside information, enter into speculation, or recommend speculation to members of his family or business associates, in commodities, land or the securities of any private company. He must obey this injunction even though his duties have no connection whatever with the Government programs or activities which may affect the value of such commodities, land or securities. And he should be careful in his personal financial activities to avoid any appearance of acting on the basis of information obtained in the course of his Government work.

It is important for consultants and advisers to have access to Government data pertinent to their duties and to maintain familiarity with the Government's plans and programs and the requirements thereof, within the area of their competence. Since it is frequently in the Government's interest that information of this nature be made generally available to an affected industry, there is generally no impropriety in a consultant's or adviser's utilizing such information in the course of his non-Government employment after it has become so available. However, a consultant or adviser may, in addition, acquire information which is not generally available to those outside the Government. In that event, he may not use such information for the special benefit of a business or other entity by which he is employed or retained or in which he has a financial interest.

In order to avoid any actual or potential abuse of information by a consultant or adviser, departments and agencies should, through information programs, make every effort to insure to the maximum extent possible that all firms within an industry have access to the same information that is available to a consultant or adviser who is employed by any of them. In addition, regular Government employees should avoid divulging confidential information to him unnecessary to the performance of his governmental responsibility, or information which directly involves the financial interests of his employer. Consultants and advisers should be instructed that information not generally available to private industry must remain confidential in their hands, and must not be divulged to their private employers or clients. In cases of doubt they should be encouraged to confer with the chief legal officer or other designated agency official who can assist in the identification of information not generally available and in the resolution of any actual or potential conflict between duties to the Government and to private employers or clients.

Occasionally an individual who becomes a Government consultant or adviser is, subsequent to his designation as such, requested by a private enterprise to act in a similar capacity. In some cases the request may give the appearance of being motivated by the desire of the private employer to secure inside information. Where the

consultant or adviser has reason to believe that the request for his services is so motivated, he should make a choice between acceptance of the tendered private employment and continuation of his Government consultancy. In such circumstances he may not engage in both. Furthermore, he should discuss any such offer of private employment with the chief legal officer of his Government agency whether or not he accepts it.

At times a private enterprise or other organization urges the appointment of one of its employees or members to a particular Government consultancy. The departments and agencies should discourage this practice. Any initiative in connection with the appointment of consultants, or in securing the names of qualified persons, should come from the Government.

Abuse of Office. An adviser or consultant shall not use his position in any way to coerce, or give the appearance of coercing, another person to provide any financial benefit to him or persons with whom he has family, business or financial ties.

Gifts. An adviser or consultant shall not receive or solicit anything of value as a gift, gratuity, or favor for himself or persons with whom he has family, business or financial ties if the acceptance thereof would result in, or give the appearance of resulting in, his loss of complete independence or impartiality in serving the Government.

INDUSTRY, LABOR, AGRICULTURAL OR OTHER REPRESENTATIVES

It is occasionally necessary to distinguish between consultants and advisers who are special Government employees and persons who are invited to appear at a department or agency in a representative capacity to speak for firms or an industry, or for labor or agriculture, or for any other recognizable group of persons, including on occasion the public at large. A consultant or adviser whose advice is obtained by a department or agency from time to time because of his individual qualifications and who serves in an independent capacity is an officer or employee of the Government. On the other hand, one who is requested to appear before a Government department or agency to present the views of a non-governmental organization or group which he represents, or for which he is in a position to speak, does not act as a servant of the Government and is not its officer or employee. He is therefore not subject to the conflict of interest laws and is not within the scope of this memorandum. However, the section of this memorandum headed "Ethical Standards of Conduct" sets forth rules of ethics by which he should be guided even though not in the status of a Government official, and the agency before which he appears should call that section to his attention.

The following principles are useful in arriving at a determination whether an individual is acting before an agency in a representative capacity:

(1) A person who receives compensation from the Government for his services as an adviser or consultant is its employee and not a representative of an outside group. However, the Government's payment of travel expenses and a *per diem* allowance does not by itself make the recipient an employee.

(2) It is rare that a consultant or adviser who serves alone is acting in a representative capacity. Those who have representative roles are

for the most part persons serving as members of an advisory committee or similar body utilized by a Government agency. It does not follow, however, that the members of every such body are acting as representatives and are therefore outside the range of the conflict of interest laws. This result is limited to the members of committees utilized to obtain the views of non-governmental groups or organizations.

(3) The fact that an individual is appointed by an agency to an advisory committee upon the recommendation of an outside group or organization tends to support the conclusion that he has a representative function.

(4) Although members of a governmental advisory body who are expected to bind outside organizations are no doubt serving in a representative capacity, the absence of authority to bind outside groups does not require the conclusion that the members are Government employees. What is important is whether they function as spokesmen for non-governmental groups or organizations and not whether they can formally commit them.

(5) Where an adviser or consultant is in a position to act as a spokesman for the United States or a government agency—as, for example, in an international conference—he is obviously acting as an officer or employee of the Government.

ADMINISTRATIVE STEPS

All departments and agencies of the Government shall

(1) bring this memorandum to the attention of all special Government employees who serve them as advisers or consultants, of such other special Government employees as they may determine and of all regular employees who supervise such advisers, consultants and others;

(2) review their existing rules and regulations and make appropriate revisions or issue new rules and regulations to promote the policies set forth in this memorandum; and

(3) take such other measures as may be appropriate to impress upon the consultants, advisers and other special Government employees referred to in subdivision (1), and upon Government officials with whom they work, that they have a responsibility to avoid situations in which a potential conflict of interest may exist. These individuals should also be cautioned to avoid situations in which a special Government employee might be thought to be influencing governmental action in matters with regard to which he has a financial or other personal interest, or to be using inside information for private gain.

While it would be highly desirable, in order to minimize the occurrence of conflicts of interest, for departments and agencies of the Government to avoid appointing to advisory positions individuals who are employed or consulted by contractors or others having a substantial amount of business with that department or agency, I recognize that the Government has, of necessity, become increasingly concerned with highly technical areas of specialization and that the number of individuals expert in those areas is frequently very small. Therefore, in many instances it will not be possible for a department or agency to obtain the services of a competent adviser or consultant who is not in fact employed or consulted by such contractors. In addition, an advisory group may of necessity be composed largely or wholly of persons of a common class or group whose employers may benefit from

the advice given. An example would be a group of university scientists advising on research grants to universities. Only in such a group can the necessary expertise be found. In all these circumstances, particular care should be exercised to exclude his employer's or clients' contracts or other transactions with the Government from the range of the consultant's or adviser's duties.

DISCLOSURE OF FINANCIAL INTERESTS

In order to carry out its responsibility to avoid the use of the services of consultants or advisers in situations where violations of the conflict of interest laws or of these regulations may occur, each department or agency of the Government shall, at the time of employment of a consultant or adviser, require him to supply it with a statement of all other employment. The statement shall list the names of all the companies, firms, State or local governmental organizations, research organizations and educational or other institutions which he is serving as employee, officer, member, director, adviser or consultant. In addition, it shall list such other financial information as the appointing department or agency shall decide is relevant in the light of the duties the appointee is to perform. The appointee may but need not be required to reveal precise amounts of investments. Each statement of private employment and financial interests should be forwarded to the chief legal officer of the department or agency concerned, for information and for advice as to possible conflicts of interest. In addition, each statement should be reviewed by those persons responsible for the employment of consultants and advisers to assist them in applying the criteria for disqualification which are set forth in this memorandum. Such statements should be kept current throughout the period during which the consultant is on the Government rolls.

LEGAL INTERPRETATION

Whenever the chief legal officer of a department or agency or his designee, believes that a substantial legal quesiton is raised by the employment of a particular consultant or adviser he should advise the Department of Justice, through the Office of Legal Counsel, in order to insure a consistent and authoritative interpretation of the law.

This memorandum shall be published in the Federal Register.

JOHN F. KENNEDY.

THE WHITE HOUSE,
May 2, 1963.

APPENDIX

18 U.S.C. 202. *Definitions.*

(a) For the purpose of sections 203, 205, 207, 208 and 209 of this title the term "special Government employee" shall mean an officer or employee of the executive or legislative branch of the United States Government, of any independent agency of the United States or of the District of Columbia who is retained, designated, appointed, or employed to perform with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis, or a part-time United

States Commissioner. Notwithstanding the next preceding sentence, every person serving as a part-time local representative of a Member of Congress in the Member's home district or State shall be classified as a special Government employee. Notwithstanding section 29 (c) and (d) of the Act of August 10, 1956 (70A Stat. 632; 5 U.S.C. 30r (c) and (d)), a Reserve officer of the Armed Forces, or an officer of the National Guard of the United States, unless otherwise an officer or employee of the United States, shall be classified as a special Government employee while on active duty solely for training. A Reserve officer of the Armed Forces or an officer of the National Guard of the United States who is voluntarily serving a period of extended active duty in excess of one hundred and thirty days shall be classified as an officer of the United States within the meaning of section 203 and sections 205 through 209 and 218. A Reserve officer of the Armed Forces or an officer of the National Guard of the United States who is serving involuntarily shall be classified as a special Government employee. The terms "officer or employee" and "special Government employee" as used in sections 203, 205, 207 through 209, and 218, shall not include enlisted members of the Armed Forces.

(b) For the purposes of sections 205 and 207 of this title, the term "official responsibility" means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct Government action.

18 U.S.C. 203. *Compensation to Members of Congress, officers, and others in matters affecting the Government.*

(a) Whoever, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly receives or agrees to receive, or asks, demands, solicits, or seeks, any compensation for any services rendered or to be rendered either by himself or another—

(1) at a time when he is a Member of Congress, Member of Congress Elect, Resident Commissioner, or Resident Commissioner Elect; or

(2) at a time when he is an officer or employee of the United States in the executive, legislative, or judicial branch of the Government, or in any agency of the United States, including the District of Columbia,

in relation to any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest, before any department, agency, court-martial, officer, or any civil, military, or naval commission, or

(b) Whoever, knowingly, otherwise than as provided by law for the proper discharge of official duties, directly or indirectly gives, promises, or offers any compensation for any such services rendered or to be rendered at a time when

the person to whom the compensation is given, promised, or offered, is or was such a Member, Commissioner, officer, or employee—

Shall be fined not more than $10,000 or imprisoned for not more than two years, or both; and shall be incapable of holding any office of honor, trust, or profit under the United States.

(c) A special Government employee shall be subject to subsection (a) only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or (2) which is pending in the department or agency of the Government in which he is serving: *Provided*, That clause (2) shall not apply in the case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days.

18 U.S.C. 205. *Activities of officers and employees in claims against and other matters affecting the Government.*

Whoever, being an officer or employee of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, including the District of Columbia, otherwise than in the proper discharge of his official duties—

(1) acts as agent or attorney for prosecuting any claim against the United States, or receives any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claim, or

(2) acts as agent or attorney for anyone before any department, agency, court, court-martial, officer, or any civil, military, or naval commission in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest—

Shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

A special Government employee shall be subject to the preceding paragraphs only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially as a Government employee or as a special Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or (2) which is pending in the department or agency of the Government in which he is serving: *Provided*, That clause (2) shall not apply in the case of a special Government employee who has served in such department or agency no more than sixty days during the immediately preceding period of three hundred and sixty-five consecutive days.

Nothing herein prevents an officer or employee, if not inconsistent with the faithful performance of his duties, from acting without compensation as agent or attorney for any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings in connection with those proceedings.

Nothing herein or in section 203 prevents an officer or employee, including a special Government employee, from acting, with or without compensation, as agent or attorney for his parents, spouse, child, or any person for whom, or for any estate for which, he is serving as guardian, executor, administrator, trustee, or other personal fiduciary except in those matters in which he has participated personally and substantially as a Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which are the subject of his official responsibility, provided that the Government official responsible for appointment to his position approves.

Nothing herein or in section 203 prevents a special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with or for the benefit of, the United States provided that the head of the department or agency concerned with the grant or contract shall certify in writing that the national interest so requires.

Such certification shall be published in the Federal Register.

Nothing herein prevents an officer or employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

18 U.S.C. 207. *Disqualification of former officers and employees in matters connected with former duties or official responsibilities; disqualification of partners.*

(a) Whoever, having been an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, after his employment has ceased, knowingly acts as agent or attorney for anyone other than the United States in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States is a party or has a direct and substantial interest and in which he participated personally and substantially as an officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, while so employed, or

(b) Whoever, having been so employed, within one year after his employment has ceased, appears personally before any court or department or agency of the Government as agent, or attorney for, anyone other than the United States in connection with any proceeding, application, request for a ruling or other determination, contract, claim, controversy,

charge, accusation, arrest, or other particular matter involving a specific party or parties in which the United States is a party or directly and substantially interested, and which was under his official responsibility as an officer or employee of the Government at any time within a period of one year prior to the termination of such responsibility—

Shall be fined not more than $10,000 or imprisoned for not more than two years, or both: *Provided*, That nothing in subsection (a) or (b) prevents a former officer or employee, including a former special Government employee, with outstanding scientific or technological qualifications from acting as attorney or agent or appearing personally in connection with a particular matter in a scientific or technological field if the head of the department or agency concerned with the matter shall make a certification in writing, published in the FEDERAL REGISTER, that the national interest would be served by such action or appearance by the former officer or employee.

(c) Whoever, being a partner of an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, acts as agent or attorney for anyone other than the United States, in connection with any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which the United States is a party or has a direct and substantial interest and in which such officer or employee of the Government or special Government employee participates or has participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation or otherwise, or which is the subject of his official responsibility—

Shall be fined not more than $5,000, or imprisoned not more than one year, or both.

A partner of a present or former officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia or of a present or former special Government employee shall as such be subject to the provisions of sections 203, 205, and 207 of this title only as expressly provided in subsection (c) of this section.

18 U.S.C. 208. *Acts affecting a personal financial interest.*

(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge,

accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest—

Shall be fined not more than $10,000, or imprisoned not more than two years, or both.

(b) Subsection (a) hereof shall not apply (1) if the officer or employee first advises the Government official responsible for appointment to his position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee, or (2) if, by general rule or regulation published in the Federal Register, the financial interest has been exempted from the requirements of clause (1) hereof as being too remote or too inconsequential to affect the integrity of Government officers' or employees' services.

18 U.S.C. 209. *Salary of Government officials and employees payable only by United States.*

(a) Whoever receives any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, from any source other than the Government of the United States, except as may be contributed out of the treasury of any State, county, or municipality; or

Whoever, whether an individual, partnership, association, corporation, or other organization pays, or makes any contribution to, or in any way supplements the salary of, any such officer or employee under circumstances which would make its receipt a violation of this subsection—

Shall be fined not more than $5,000 or imprisoned not more than one year, or both.

(b) Nothing herein prevents an officer or employee of the executive branch of the United States Government, or of any independent agency of the United States, or of the District of Columbia, from continuing to participate in a bona fide pension, retirement, group life, health or accident insurance, profit-sharing, stock bonus, or other employee welfare or benefit plan maintained by a former employer.

(c) This section does not apply to a special Government employee or to an officer or employee of the Government serving without compensation, whether or not he is a special Government employee, or to any person paying, contributing to, or supplementing his salary as such.

(d) This section does not prohibit payment or acceptance of contributions, awards, or other expenses under the terms of the Government Employees Training Act (Public Law 85–507, 72 Stat. 327; 5 U.S.C. 2301–2319, July 7, 1958).

[F.R. Doc. 63–4917; Filed, May 3, 1963; 1:00 p.m.]

EXECUTIVE ORDER NO. 11222

The White House

STATEMENT BY THE PRESIDENT

Government personnel bear a special responsibility to be fair and impartial in their dealings with those who have business with the government. We cannot tolerate conflicts of interest or favoritism—or even conduct which gives the appearance that such actions are occurring—and it is our intention to see that this does not take place in the Federal Government.

I have, therefore, today signed an executive order which codifies, clarifies, and strengthens the standards of ethical conduct for Executive Branch personnel.

The unusually high standards of honesty, integrity, and impartiality of United States government employees are cause for pride on the part of all Americans, for unquestionably they are among the highest ever attained by any government—national or local—that has ever existed. Although the overwhelming majority of Federal employees experience absolutely no problem in this regard, there are some whose duties on occasion place them in difficulty or awkward situations, and thus the order issued today lays down general guidelines and standards of conduct as clearly as possible. In large measure, the special problems faced by Federal employees lie in the area of judgment, propriety and good taste. Obviously, these cannot be legislated or prescribed by order or regulation. I am confident, however, that the executive order will direct the attention of both Federal employees and those who do business with the Federal Government to this sometimes difficult area. In drafting the order, every effort has been made to take into account the rights and privileges of Federal employees and, on the other hand, the right of the public to have confidence in the fairness and integrity of government personnel.

One of the main purposes of the executive order is to encourage individuals faced with questions involving subjective judgment to seek counsel and guidance. Thus, the Chairman of the Civil Service Commission has been instructed to work with each department and agency head to establish within his organization designated individuals who can provide the guidance and interpretation necessary to relate general principles to specific situations.

The order requires all officials appointed by the President and reporting directly to him and certain other Federal officials and employees to file statements of their financial interests. It also imposes strict limitations on the acceptance of gifts, entertainment, and favors by Executive Branch personnel.

The order assigns central responsibility to the Civil Service Commission for issuing government-wide regulations implementing the

order and for reviewing supplementary agency regulations covering their special situations. This should insure consistency and individual agency flexibility.

The order emphasizes the strong intention of the Administration that the affairs of Government be conducted openly, honorably, honestly and impartially.

PART I states the general Government policy regarding the ethical conduct expected of all officials and employees.

PART II sets forth standards governing the conduct of Executive Branch personnel with specific attention given to the acceptance of gifts, entertainment and favors; outside employment, teaching, and writing; and the use of Government information for private personal gain.

PART III provides standards of conduct for temporary part-time or intermittent advisers and consultants to the Government.

PART IV spells out the requirement that top officials file statements listing their outside financial interests.

The remaining parts of the order are concerned with certain delegations of authority to the Civil Service Commission and to agency heads under the conflicts-of-interest or other laws and under the order.

THE WHITE HOUSE

EXECUTIVE ORDER—PRESCRIBING STANDARDS OF ETHICAL CONDUCT FOR GOVERNMENT OFFICERS AND EMPLOYEES

By virtue of the authority vested in me by Section 301 of Title 3 of the United States Code, and as President of the United States, it is hereby ordered as follows:

PART I—POLICY

SEC. 101. Where government is based on the consent of the governed, every citizen is entitled to have complete confidence in the integrity of his government. Each individual officer, employee, or adviser of government must help to earn and must honor that trust by his own integrity and conduct in all official actions.

PART II—STANDARDS OF CONDUCT

SEC. 201. (a) Except in accordance with regulations issued pursuant to subsection (b) of this section, no employee shall solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from any person, corporation, or group which—

(1) has, or is seeking to obtain, contractual or other business or financial relationships with his agency;

(2) conducts operations or activities which are regulated by his agency; or

(3) has interests which may be substantially affected by the performance or nonperformance of his official duty.

(b) Agency heads are authorized to issue regulations, coordinated and approved by the Civil Service Commission, implementing the provisions of subsection (a) of this section and to provide for such

exceptions therein as may be necessary and appropriate in view of the nature of their agency's work and the duties and responsibilities of their employees. For example, it may be appropriate to provide exceptions (1) governing obvious family or personal relationships where the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors—the clearest illustration being the parents, children or spouses of federal employees; (2) permitting acceptance of food and refreshments available in the ordinary course of a luncheon or dinner or other meeting or on inspection tours where an employees may properly be in attendance; or (3) permitting acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans. This section shall be effective upon issuance of such regulations.

(c) It is the intent of this section that employees avoid any action, whether or not specifically prohibited by subsection (a), which might result in, or create the appearance of—

(1) using public office for private gain;
(2) giving preferential treatment to any organization or person;
(3) impeding government efficiency or economy;
(4) losing complete independence or impartiality of action;
(5) making a government decision outside official channels; or
(6) affecting adversely the confidence of the public in the integrity of the Government.

SEC. 202. An employee shall not engage in any outside employment, including teaching, lecturing, or writing, which might result in a conflict, or an apparent conflict, between the private interests of the employee and his official government duties and responsibilities, although such teaching, lecturing, and writing by employees are generally to be encouraged so long as the laws, the provisions of this order, and Civil Service Commission and agency regulations covering conflict of interest and outside employment are observed.

SEC. 203. Employees may not (a) have direct or indirect financial interests that conflict substantially, or appear to conflict substantially, with their responsibilities and duties as Federal employees, or (b) engage in, directly or indirectly, financial transactions as a result of, or primarily relying upon, information obtained through their employment. Aside from these restrictions, employees are free to engage in lawful financial transactions to the same extent as private citizens. Agencies may, however, further restrict such transactions in the light of the special circumstances of their individual missions.

SEC. 204. An employee shall not use Federal property of any kind for other than officially approved activities. He must protect and conserve all Federal property, including equipment and supplies, entrusted or issued to him.

SEC. 205. An employee shall not directly or indirectly make use of, or permit others to make use of, for the purpose of furthering a private interest, official information not made available to the general public.

SEC. 206. An employee is expected to meet all just financial obligations, especially those—such as Federal, State, or local taxes—which are imposed by law.

PART III—STANDARDS OF ETHICAL CONDUCT FOR SPECIAL GOVERNMENT EMPLOYEES

SEC. 301. This part applies to all "special Government employees" as defined in Section 202 of Title 18 of the United States Code, who are employed in the Executive Branch.

SEC. 302. A consultant, adviser or other special Government employee must refrain from any use of his public office which is motivated by, or gives the appearance of being motivated by, the desire for private gain for himself or other persons, including particularly those with whom he has family, business, or financial ties.

SEC. 303. A consultant, adviser, or other special Government employee shall not use any inside information obtained as a result of his government service for private personal gain, either by direct action on his part or by counsel, recommendations or suggestions to others, including particularly those with whom he has family, business, or financial ties.

SEC. 304. An adviser, consultant, or other special Government employee shall not use his position in any way to coerce, or give the appearance of coercing, another person to provide any financial benefit to him or persons with whom he has family, business, or financial ties.

SEC. 305. An adviser, consultant, or other special Government employee shall not receive or solicit from persons having business with his agency anything of value as a gift, gratuity, loan or favor for himself or persons with whom he has family, business, or financial ties while employed by the government or in connection with his work with the government.

SEC. 306. Each agency shall, at the time of employment of a consultant, adviser, or other special Government employee require him to supply it with a statement of all other employment. The statement shall list the names of all the corporations, companies, firms, State or local government organizations, research organizations and educational or other institutions in which he is serving as employee, officer, member, owner, director, trustee, adviser, or consultant. In addition, it shall list such other financial information as the appointing department or agency shall decide is relevant in the light of the duties the appointee is to perform. The appointee may, but need not, be required to reveal precise amounts of investments. The statement shall be kept current throughout the period during which the employee is on the Government rolls.

PART IV—REPORTING OF FINANCIAL INTERESTS

SEC. 401. (a) Not later than ninety days after the date of this order, the head of each agency, each Presidential appointee in the Executive Office of the President who is not subordinate to the head of an agency in that Office, and each full time member of a committee, board, or commission appointed by the President, shall submit to the Chairman of the Civil Service Commission a statement containing the following:

(1) A list of the names of all corporations, companies, firms, or other business enterprises, partnerships, nonprofit organizations, and educational or other institutions—

(A) with which he is connected as an employee, officer, owner, director, trustee, partner, adviser, or consultant; or

(B) in which he has any continuing financial interests, through a pension or retirement plan, shared income, or otherwise, as a result of any current or prior employment or business or professional association; or

(C) in which he has any financial interest through the ownership of stocks, bonds, or other securities.

(2) A list of the names of his creditors, other than those to whom he may be indebted by reason of a mortgage on property which he occupies as a personal residence or to whom he may be indebted for current and ordinary household and living expenses.

(3) A list of his interests in real property or rights in lands, other than property which he occupies as a personal residence.

(b) Each person who enters upon duty after the date of this order in an office or position as to which a statement is required by this section shall submit such statement not later than thirty days after the date of his entrance on duty.

(c) Each statement required by this section shall be kept up to date by submission of amended statements of any changes in, or additions to, the information required to be included in the original statement, on a quarterly basis

SEC. 402. The Civil Service Commission shall prescribe regulations, not inconsistent with this part, to require the submission of statements of financial interests by such employees, subordinate to the heads of agencies, as the Commission may designate. The Commission shall prescribe the form and content of such statements and the time or times and places for such submission.

SEC. 403. (a) The interest of a spouse, minor child, or other member of his immediate household shall be considered to be an interest of a person required to submit a statement by or pursuant to this part.

(b) In the event any information required to be included in a statement required by or pursuant to this part is not known to the person required to submit such statement but is known to other persons, the person concerned shall request such other persons to submit the required information on his behalf.

(c) This part shall not be construed to require the submission of any information relating to any person's connection with, or interest in, any professional society or any charitable, religious, social, fraternal, educational, recreational, public service, civic, or political organization or any similar organization not conducted as a business enterprise and which is not engaged in the ownership or conduct of a business enterprise.

SEC. 404. The Chairman of the Civil Service Commission shall report to the President any information contained in statements required by Section 401 of this part which may indicate a conflict between the financial interests of the official concerned and the performance of his services for the Government. The Commission shall report, or by regulation require reporting, to the head of the agency concerned any information contained in statements submitted pursuant to regulations issued under Section 402 of this part which may indicate a conflict between the financial interests of the officer or employee concerned and the performance of his services for the Government.

SEC. 405. The statements and amended statements required by or pursuant to this part shall be held in confidence, and no information as to the contents thereof shall be disclosed except as the Chairman of the Civil Service Commission or the head of the agency concerned may determine for good cause shown.

SEC. 406. The statements and amended statements required by or pursuant to this part shall be in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, regulation, or order. The submission of a statement or amended statements required by or pursuant to this part shall not be deemed to permit any person to participate in any matter in which his participation is prohibited by law, regulation, or order.

PART V—DELEGATING AUTHORITY OF THE PRESIDENT UNDER SECTIONS 205 AND 208 OF TITLE 18 OF THE UNITED STATES CODE RELATING TO CONFLICTS OF INTEREST

SEC. 501. As used in this part, "department" means an executive department, "agency" means an independent agency or establishment or a Government corporation, and "head of an agency" means, in the case of an agency headed by more than one person, the chairman or comparable member of such agency.

SEC. 502. There is delegated, in accordance with and to the extent prescribed in Sections 503 and 504 of this part, the authority of the President under Sections 205 and 208(b) of Title 18, United States Code, to permit certain actions by an officer or employee of the Government, including a special Government employee, for appointment to whose position the President is responsible.

SEC. 503. Insofar as the authority of the President referred to in Section 502 extends to any appointee of the President subordinate to or subject to the chairmanship of the head of a department or agency, it is delegated to such department or agency head.

SEC. 504. Insofar as the authority of the President referred to in Section 502 extends to an appointee of the President who is within or attached to a department or agency for purposes of administration, it is delegated to the head of such department or agency.

SEC. 505. Notwithstanding any provision of the preceding sections of this part to the contrary, this part does not include a delegation of the authority of the President referred to in Section 502 insofar as it extends to:

(a) The head of any department or agency in the Executive Branch;

(b) Presidential appointees in the Executive Office of the President who are not subordinate to the head of an agency in that Office; and

(c) Presidential appointees to committees, boards, commissions, or similar groups established by the President.

PART VI—PROVIDING FOR THE PERFORMANCE BY THE CIVIL SERVICE COMMISSION OF CERTAIN AUTHORITY VESTED IN THE PRESIDENT BY SECTION 1753 OF THE REVISED STATUTES

SEC. 601. The Civil Service Commission is designated and empowered to perform, without the approval, ratification, or other action of the President, so much of the authority vested in the President by Section 1753 of the Revised Statutes of the United States

(5 U.S.C. 631) as relates to establishing regulations for the conduct of persons in the civil service.

SEC. 602. Regulations issued under the authority of Section 601 shall be consistent with the standards of ethical conduct provided elsewhere in this order.

PART VII—GENERAL PROVISIONS

SEC. 701. The Civil Service Commission is authorized and directed, in addition to responsibilities assigned elsewhere in this order:

(a) To issue appropriate regulations and instructions implementing Parts II, III, and IV of this order;

(b) To review agency regulations from time to time for conformance with this order; and

(c) To recommend to the President from time to time such revisions in this order as may appear necessary to ensure the maintenance of high ethical standards within the Executive Branch.

SEC. 702. Each agency head is hereby directed to supplement the standards provided by law, by this order, and by regulations of the Civil Service Commission with regulations of special applicability to the particular functions and activities of his agency. Each agency head is also directed to assure (1) the widest possible distribution of regulations issued pursuant to this section, and (2) the availability of counseling for those employees who request advice or interpretation.

SEC. 703. The following are hereby revoked:

(a) Executive Order No. 10939 of May 5, 1961.

(b) Executive Order No. 11125 of October 29, 1963.

(c) Section 2(a) of Executive Order No. 10530 of May 10, 1954.

(d) White House memorandum of July 20, 1961, on "Standards of Conduct for Civilian Employees."

(e) The President's Memorandum of May 2, 1963, "Preventing Conflicts of Interest on the Part of Special Government Employees." The effective date of this revocation shall be the date of issuance by the Civil Service Commission of regulations under Section 701(a) of this order.

SEC. 704. All actions heretofore taken by the President or by his delegates in respect of the matters affected by this order and in force at the time of the issuance of this order, including any regulations prescribed or approved by the President or by his delegates in respect of such matters, shall, except as they may be inconsistent with the provisions of this order or terminate by operation of law, remain in effect until amended, modified, or revoked pursuant to the authority conferred by this order.

SEC. 705. As used in this order, and except as otherwise specifically provided herein, the term "agency" means any executive department, or any independent agency or any Government corporation; and the term "employee" means any officer or employee of an agency.

LYNDON B. JOHNSON.

THE WHITE HOUSE,
May 8, 1965.

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